SUPREME COURT. U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 212

LORING J. WHITESIDE,
Petitioner,

vs.

STATE OF CONNECTICUT,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

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Whenever italicized words or portions of quotations appear, the emphasis is added by petitioner.

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Petitioner, Loring J. Whiteside, respectfully prays that a writ of certiorari issue to review the final judgment of the Supreme Court of Errors of the State of Connecticut, finding no error in the judgment of guilty on 4 out of 23 counts of criminal libel upon which a fine of $500, a sentence of 20 days imprisonment and 2 years probation was imposed by the Court of Common Pleas of New Haven County.

OPINION BELOW

The opinion of the Supreme Court of Errors of the State of Connecticut is reported in 148 Conn.208-218, Part III of Advance Sheets, and is set forth in the Appendix to this Petition (p. A1).

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

The judgment of the Supreme Court of Errors of the State of Connecticut was entered in March 21, 1961. A motion for reargument was filed by petitioner and was denied by an order entered April 11, 1961 (A9).

Jurisdiction of this Court is invoked under 28 U.S.C., Par.1257 (3). Petitioner was deprived of rights under the 6th and 14th amendments to the Constitution of the United States by said decision of the Supreme Court of Errors, and by its denial on May 23, 1961 of the 2nd and 3rd grounds set forth in petitioner's Motion for Correction of the Printed Record and for such other relief or action as that Court might deem proper (A13); and by its further denial on June 7, 1961 of petitioner's Motion for Permission to File Annexed Supplementary Motion for Correction of the Printed Record and for such other relief or action as that Court might deem proper (A14).

QUESTIONS PRESENTED

1. Did the trial Court in a criminal libel suit involving the entire contents of 23 midget-sized weekly newspapers, covering 123 pages of approximately 82,500 words, by denying petitioner's motion for a bill of particulars as to which statements in said 23 newspapers were regarded as libelous, deprive him of his rights, under the 6th amendment of the Constitution of the United States, to be informed of the nature and cause of the accusation against him?

2. Did the Supreme Court of Errors of the State of Connecticut by condoning a flood tide of errors, distortions and falsifications in the printed record on appeal, and by other significant conduct of public record, thereby disclose a state of prejudice against the petitioner, such as to make it evident that it could not be expected to render a fair or im-

partial decision in the case, thus depriving him of both liberty and property without due process of law, contrary to Article XIV, Section 1 of the amendments to the Constitution of the United States?

STATEMENT OF CASE

On March 5, 1958, as a public service and without any desire or expectation of monetary gain, the petitioner instituted publication of a minuscule newspaper to expose irregular and illegal conduct of various public officials and lawyers who persisted in such conduct despite vigorous protests and efforts to correct them otherwise. The trail of the transgressions in New Haven led directly into the vice underworld of the city, and soon was involving prominent lawyers and judges who took orders or gave orders in a variety of illegal transactions. Desire to obtain reimbursement for some of the victims of these prominent lawyers, provided the stimulus for continued publication, at least until decent rectification of known wrongs was made, all of which clearly appears in the 23 issues of this publication which were made a part of the "finding" in this case (R.91) and were reviewed by the Supreme Court of Errors in this state, and have been made available for each of the 9 Justices of this Court in a plastic bound volume accompanying the printed Record. A chart printed on the last 2 pages of Exhibit 14 (Count 14) shows the distribution of free copies among Judges and various public officials in an effort to gain law enforcement in the cases described.

FIRST ATTEMPT TO STOP PUBLICATION

This Court will be able to get a clearer view of the whole situation by being acquainted with what occurred in the Municipal Court of New Haven as shown on the complaint and information and judgment file made a part of the Certified Record in this case. Petitioner was arrested on November 17, 1958, charged with 34 counts of criminal

libel and kept in custody over night under $25,000 bail, which was reduced the next morning to $15,000, and was furnished by him to obtain his liberty. After trial before Judge Harold E. Donegan, jury trials not being permitted in that Court, he was found guilty on 24 counts, and the rest were nolled. Judge Donegan imposed a total fine of $2400. and 30 days on each count consecutive, or a total of 720 days, to be suspended in care of the probation officer *upon condition that publication ends.* Petitioner took an immediate appeal to Court of Common Pleas, and by that time the appeal bond was reduced to $5000, and by the time the appeal had to be taken from the Court of Common Pleas on the 4 guilty counts, the bond was reduced to a much more normal $500 where it now stands. The character and fate of this Judge Donegan will be found described in greater detail in the Appendix (A22-25, A27-33).

TRIAL IN THE COURT OF COMMON PLEAS

This was a trial de novo to handle which the petitioner was very fortunate to obtain the services of a talented trial lawyer, B. Fred Damiani, who fearlessly plunged into the trial, handicapped by no knowledge as to what the state regarded as libelous and fought to establish the truth of every published statement in the 23 newspapers upon which the charges were based. As shown by a photographic copy of his appearance to be found in the certified record, he entered the case on February 9, 1959, and as certified by the Court Clerk, the selection of the jury of 12 was completed 10 days later, on February 19; the first day of the trial was February 20, the jury retired for their deliberations after the charge of the Court at 12:05 P.M. on March 23, they returned for further instructions at 2:27 P.M. on March 23 (see Record p. 71 & 72), and reported their verdict to the Court at 7:48 P.M. on March 24, after 13 hours and 43 minutes of deliberation, as computed from above time records.

THE COMMON PLEAS JURY VERDICT

It will be noticed at the top of page 71 of the Record referred to above that the jury was much puzzled by the complete failure of the state to put on the witness stand any of the 16 alleged libelees or any other witnesses to repudiate the alleged libels published in the Grapevine Press. All 16 of them were mute, save only 4 of them subpoenaed by the petitioner. They were Ralph and Sydney Alderman, charged by the petitioner with being the head vice lords in this area, Arthur T. Barbieri, charged with being a member of the vice underworld, and Judge Shanley as being guilty of misconduct in his handling of a probate matter. Their appearance and testimony gave the jurors a chance to exercise their function of being sole judges of the facts as well as of the law in libel cases, and the opportunity of sizing up these 4 witnesses and coming to a conclusion as to whether they wanted to believe all, part or none of their testimony, as they were instructed was their privilege in findings 148, 149, 157 and 158 beginning on page 44 of the printed Record. The case of the state thus rested solely upon the contents of the 23 issues and cross examination of the petitioner's witnesses. To clarify the jury verdict for this Court the following chart is presented; listing *all 16* of the alleged libelees named in the information:

Guilty Counts	*Alleged Libelees*	*Not Guilty Counts*
0	Arthur T. Barbieri	13, 18, 20, 21, 22
0	Raymond Eagan, Sr.	15
0	*Louis Evans	16
0	*Ellsworth B. Foote	16
0	*Richard C. Hannon	16
0	*Spencer S. Hoyt	1, 2, 4, 19
0	Lisle Longbotham	18, 19,
0	*Senator Edw. L. Marcus	15, 16, 18, 19, 20, 22
0	*Judge James Shanley	1, 3, 4, 19
0 (10)	*Gilbert Winnick	23

Guilty Counts	*Alleged Libelees*	*Not Guilty Counts*
9, 12, 17	*Bernard P. Kopkind	1, 2, 3, 4, 5, 6, 8, 11, 14, 15, 18, 22
7, 9, 17	*Sydney Alderman	1, 3, 5 (22)
9, 17	Ralph Alderman	1, (22)
9, 12	*Charles L. Flynn	1, 2, 4, 5, 10, 14 (13)
17	*Daniel Pouzzner	(14) (15)
7 (6)	John Monahan	

*Persons marked thus are members of the bar.

Not guilty count 22 contains what amounts to a summary of previous counts dealing with Kopkind and the 2 Aldermans and covers just about every statement made in the 4 guilty counts, except the warning "They will kill you" reported in Count 7. However the same idea of extinguishing rebellious souls is set forth in Counts 1 and 3, pages 4 and 3 respectively, both of which are among the not guilty ones, and it is common knowledge that top racketeers must follow such practices to enforce discipline within their ranks.

The jury was so convinced that Kopkind built up and organized and had become king-pin of the vice underworld in this area that they found the publisher not guilty on 12 of the Kopkind issues, all of them stressing his legal headship, or his goon tactics, his fraudulent betrayal of a client, his control over judges and officials, or his commission of perjury, blackmail and intimidation. All 4 of the guilty counts center around Kopkind as the legal head and organizer of the vice underworld, his 2 secret clients, the 2 Alderman brothers, and his 2 law partners, Dan Pouzzner (1929 to 1953) and Charlie Flynn (1952 to 1961), both of whom were charged in Counts 14 and 15 with sharing in Kopkind's illegal fees, or "criminal loot," from his clients, the 2 vice czars, and the jury accepted the contents of those 2 counts as truth and held the publisher not guilty of any libel.

THE APPEAL TO THE SUPREME COURT OF ERRORS

The guilty verdict and judgment on 4 counts necessitated an appeal and it was thought this would provide a simple solution to the 4 counts, to have the case heard by an impartial court far removed from the baneful influence to which lower courts are so often subjected. On pages A22-33 of the Appendix will be found some of the difficulties encountered by the petitioner in the Municipal Court and in the prosecution of a writ of error therefrom to the Supreme Court of Errors involving a contempt fine and one or more falsifications of the printed Record. But that has proved to be a mere drop in the bucket, compared with the deluge of falsifications in the printed Record of *this* case, to which your attention is now directed. So numerous are these falsifications that no attempt will be made to exhaust the subject, but enough will be pointed out, it is hoped, to convince this Court of their presence in large numbers.

FALSIFICATION No. 1. Alteration and false certification of Judge Wall's sentence by the two court clerks charged with compiling the Record. This is perhaps the most obvious of all because of the 3 page insert to be found in each Record for use at page 10, authorized by the Supreme Court on May 23, 1961. The only change is the substitution of the last 4 lines of the insert for the erroneous last 2 lines on page 12 of the Record. See pages A10 and A21 of the Appendix for more detail.

FALSIFICATION No. 2. This is really a long series of 19 falsifications found in Judge Wall's findings Nos. 13, 15, 17, 19, 21, 23, 27, 31, 33, 37, 39, 41, 43, 47, 49, 51, 53, 55 & 57, found on pages 21 to 31 of the Record. Immediately preceding each one of these numbered findings is a related finding setting forth high spots published in one of the not guilty issues upon which the 19 not guilty counts are based, and then the Judge sees fit to state in the erroneous findings —"That said matter which was published in said newspaper by the defendant of and concerning (*the alleged libelees*

in each not guilty count) was false and malicious." Judge Wall marches right through all of the 23 counts in the same identical manner, thus declaring as his finding that the petitioner was guilty on all 23 counts, despite his having discharged him on 19 of them. (R. 12). Your petitioner has been unable to find any precedent in the books or among practitioners for such an exhibition of malevolence.

But Judge Wall was not the *author* of these falsified findings, except by adoption. They were all conjured up in the fertile mind of the prosecuting attorney of the Court of Common Pleas, George Tiernan, as can be seen by reference to the counterfinding prepared and filed by him on August 31, 1959 to be found among the documents certified to this Court. However the establishment of George R. Tiernan as the originator and perpetrator of these grave errors, does not in any sense relieve Judge Wall of his hearty co-operation with Tiernan. Judge Wall did not omit a single one of the 91. counterfindings! In 5 of them, 2, 7, 83, 88 & 90, he made very slight additions or transpositions in the interest of clarity, in 4 of them he made additions of quotations from the issue under consideration, see findings 24, 28, 34 & 45; but in 2 of them he apparently was not satisfied that Tiernan had villified the publisher sufficiently, so in finding 11 in the 2nd line from the top of page 20 of the Record, Judge Wall has added the word "scurrilous" to the other 3 words "Offensive, indecent and abusive" provided by Tiernan; and in finding 9 on page 19 Judge Wall has added "or twisted statement" to Tiernan's definition of what "Grapevine" means. There is no doubt from a survey of the situation that Judge Wall and prosecutor Tiernan share equally the guilt of presenting such a mass of falsehoods in the Record to serve as a guide to the 5 Judges of the Supreme Court of Errors, but it is quite evident the prosecutor did at least 95% of the work and supplied at least 99% of the ingenuity. See Appendix p. A12 for further comment on this long series of 19 palpable errors.

FALSIFICATIONS Nos. 3 & 4. One of these is the Catholic Priest distortion contained in finding #28 (R. 24)

which is fully described in the Appendix (A11, 12) and need not be repeated here. The second is to be found on page 26 of the Record in Finding 36, where the Judge puts into the Petitioner's mouth, words uttered by one of the alleged libelees, to the effect that a suit for libel against the petitioner would be useless. This likewise is fully described in the Appendix (A17-18).

FALSIFICATION No. 5. This again is a series of falsifications in the sense that the prosecutor knowing that he has no grounds and no right to present the names of various prominent persons named in the 23 issues as having been libeled, nevertheless surreptiously smuggles their names into the findings so as to give the false impression that they have been libeled, thus spreading confusion and prejudice in the minds of the 5 Justices of the Supreme Court charged with passing upon the guilt of the petitioner. Some of those thus treated are the following: (The numbers shown indicate the findings beginning with #18 (R. 21).

44, 28	Grievance Committee has abdicated and its machinery is in the control of the underworld.
28	Joseph Morse, investigator and attorney for Grievance Committee plays ball with the underworld and has placed it in control of the committee machinery.
48	Bill Hadden, former attorney general of State, is a member of one of the rottenest firms that ever graced the New Haven bar, namely, Pouzzner and Hadden.
18.36.69.72.73.	Peggy Buckholtz defrauding her father, her celebrated uterus, her illegimate child & forging a check.
36	Alec Botte fathered the illegitimate child of Peggy who some years later became his wife.
48, 81	John Murphy of New Jersey poisoned his aunt in Shelton.

Further comment upon this distinct class of misleading representations will be found in Appendix (A18-19).

FALSIFICATION No. 6. Finding #11 (R. 19-20) is a prime example of falsifying with respect to 10 of the 16 persons named therein, as is more fully set forth in the Appendix (A15-17).

FALSIFICATION No. 7. Finding #90 (R. 34) is a good one to close this subject. It reads—"*Most of the issues of the Grapevine Press show a reckless disregard for the truth.*" The jury declared 19 issues out of 23 to be true. That would mean that they considered 83% of the 23 issues to be true. And when the remaining 4 issues are examined with a little care, it is found that by comparison with the true issues, they come as near to being 100% true as it is possible for finite minds to attain. Now this is as good a measuring rod to apply to prosecutor Tiernan as any, so let us see how he stacks up on the subject of truth. Right off the bat he and the Judge spread out an 83% falsehood before the 5 Justices of the High Court, and when the remaining 4 counts are carefully considered, it is found their representations to the 5 Justices achieve as near 100% falsity as can be measured by human beings.

ASSIGNMENT OF ERROR #8 IN RECORD P. 94

Here the petitioner's attorney set forth 47 of the Judge's findings as being erroneous. We have already discussed 28 of them and 5 more not listed in #8. 19 remain upon which we have made no comment, but not because comment is not deserved. For very good reasons, petitioner's attorney made no further comment upon these 47 erroneous findings. But, to borrow a well known phrase, res ipsa loquiter so loud, that prosecutor Tiernan just could not ignore it. So he devotes all of page 24 in his brief to answering Assignment of Error 8. That page is so interesting, it will be found in Appendix (A42). Should there be doubt in anyone's mind as to the falsity of Judge Wall's findings as to the 19 not guilty counts, that doubt can now be put at rest forever

by what Prosecutor Tiernan says about these 19 findings as listed *supra* and one more, #84, all of which he says on page 24 of his brief:

> "pertain to counts on which defendant was acquitted so that a discussion of these paragraphs is unnecessary."

In this simple manner he dismisses the whole bunch of the 19 falsehoods inserted in the Record by himself and Judge Wall and in effect withdraws them because the defendant was acquitted on them. A fair paraphrase of what he is saying would run somewhat like this:

> "Yes, Judge Wall and I did insert 19 falsehoods into the Record, but what difference does it make? The defendant was acquitted on all 19, so they don't count. So what?"

The way Tiernan handles his falsification in Finding 11 concerning 10 of the alleged libelees is a gem. All he says is (A42)

> "Paragraph 11 included the introduction of the twenty-three issues of "The Grapevine Press" and the testimony of Bernard Kopkind."

But Kopkind's testimony was very brief (see Appendix in Plaintiff's Brief p. 19) and was confined simply to naming 14 of the alleged libelees named in the information, giving their occupations and indicating that they were living persons. He said not a thing about any of them having had offensive, indecent, scurrilous or abusive matter said about them. So he cannot push that falsehood over on to Kopkind. He and Judge Wall share the authorship of that falsehood and must share the responsibility therefor.

EFFORTS OF PETITIONER TO PRESS THE 2 CONSTITUTIONAL QUESTIONS

1. *His right under the 6th Amendment "to be informed of the nature and cause of the accusation."*

Connecticut State Constitution, Article 1, Section 9, gives him the same right and sections 344, 345 and 355 of the

Connecticut Practice Book seek to safeguard said constitutional rights of any accused.

This question was brought up sharply in the *trial court* by

a. A MOTION FOR BILL OF PARTICULARS on January 5, 1959 (A. 35) which was denied by Judge Wall in a written memorandum (A. 40).

b. A DEMURRER on January 14, 1959 which was denied by Judge Wall (A. 36).

c. The refusal of defendant to plead (R. 11) on January 14, 1959 to any of the 23 counts for lack of knowledge as to the nature of the accusation. For transcript relating to the 4 guilty counts see A37-40.

In the *Supreme Court of Errors* the question was raised and briefed and orally urged as an incident of Assigned Error 1–(a) declaring the information defective because of the absence of any allegation of malice, *or facts* which are its equivalent (R. 92). Such facts would consist of the libelous language complained of, or at least the pages and lines in the newspaper where they might be found.

The decision of the Supreme Court of Errors (A2, line 17) makes only one slight reference to the constitutionality of Par. 344 of the Practice Book, dealing with this subject. Unless that can be considered as bearing on the constitutional question involved, no other discussion of it is to be found in the opinion. In consequence the petitioner made under date of May 31, 1961 a motion for certification by this court as to the consideration and rejection of a federal constitutional question, hoping thereby to establish beyond all doubt that the matter had been presented, discussed, considered and rejected by the Supreme Court of Errors (A33). But on June 7, 1961 that motion was denied on the following grounds:

> "as the claims made in it were not included in the assignments of error as set forth on pages 92-98 of the appeal record. Conn. Practice Book Sec. 409. By the Court, Baldwin, C. J." (A35).

Your petitioner does not presume to pass upon the sufficiency of the efforts made by him or on his behalf to have his constitutional rights respected or passed upon. All he does know is that it required super-human efforts on the part of his counsel to penetrate the approximately 82,500 words involved without any guide as to what the prosecutor regarded as libelous, and to marshal the witnesses on short notice to get before the jury enough of the truth to convince 11 of them that the defendant should be found not guilty on all 23 counts. Only Divine Guidance could have accomplished that miracle.

2. *Petitioner's right under the 14th amendment not to be deprived of liberty or property without due process of law.*

The violation of this right occurred primarily on the appeal to the Supreme Court of Errors and on the part of its 5 Justices, so that until that appeal was concluded and the decision rendered, there was no possible way of presenting the Federal question before that Court for a decision or even of knowing of its existence. Just as soon as the shocking facts began to appear, the petitioner took steps to present them to the Court for correction *or for such other relief or action as the Court deemed proper.* Two major steps were taken:

a. *A Motion for Correction of the Printed Record* under date of May 4, 1961 (A10) was presented and refused by Edward Horwitz, New Haven Clerk of the Supreme Court, who said it ought to go to Edward Lynch, Clerk of Common Pleas. He refused it and said it ought to go to Edward Horwitz. They got together and Lynch took it on May 8. Only by repeated proddings during the next 2 weeks was anything done at all. Judge Wall bowed out, so Edward Lynch phoned Chief Justice Baldwin on the morning of May 22, and he accepted it (A13). The motion called for correction of Record in 3 particulars:

ONE. Correct the last two lines of Judge Wall's judgment so as to conform to the original judgment file.

TWO. Correct the falsified Finding #28 misquoting what the publisher said about the Catholic Priest being Weinstein's partner in gambling.

THREE. Strike out the 19 Findings which falsify the 19 Not Guilty counts.

It was announced on May 31, that under date of May 23, 1961, the Court made the following memorandum of decision (A13):

> "It appearing to this Court that the clerk of the Court of Common Pleas erroneously recorded in the original judgment file the judgment of the trial court and has since corrected its judgment file to conform to the judgment of the Court, it is ordered that the judgment file in the printed record in this court be corrected to conform to the corrected judgment file. The motion for correction of the printed record, so far as the second and third grounds of correction are concerned, is denied. See Practice Book Section 392, 396. By the Court, Baldwin, C. J."

b. In the meantime under date of May 24, 1961 the petitioner filed a *Motion for Permission to File Annexed Supplementary Motion for Correction of the Printed Record*, and for such other relief or action as this Court deems proper, (A13) and utilized the occasion to place before the Supreme Court of Errors not only the 5 or 6 classes of falsifications which had flooded the Record, but also a variety of other pronounced circumstances in connection with the conduct of all of the Justices of the Supreme Court to indicate and establish that they had all been prejudiced against the petitioner, and as such could not act fairly as Judges of his appeal, and by so doing had deprived him of due process of law under the 14th Amendment of the Federal Constitution. On June 13, 1961 the Court announced that on June 7 the following action was taken (A14):

> "Motion denied, corrections of a finding by this Court are made only in response to assignments of error filed before the determination of the appeal pursuant to Sections 396, 400 of the Connecticut Practice Book. By the Court, Baldwin, C. J."

The Court by such a denial must still have been in such a state of confusion that it overlooked that Judge Wall's finding #11 in section 1, and findings #69, 73 & 81 in section 3 of the supplementary motion, were all set forth in section 8 of the assignments of error (R. 94) ; and *furthermore* that 19 of Judge Wall's falsified findings presented for correction in section 3 of the earlier main motion had likewise been set forth in said section 8 of the assignments of error, making a total of 23 of the falsified findings thus duly set forth in section 8, thus rendering this excuse purely fictitious, as to at least 23 of the corrections requested. But the most sublime explanation of all is that offered by the Supreme Court in its decision (A5-6) where it states:

> "The defendant's objection to the inclusion of certain paragraphs in the finding involves a misconception of the nature of the finding in a jury trial. It is merely a narrative of the facts claimed to have been proved by each side, made for the purpose of fairly presenting any claimed errors in the charge or rulings of the court. **If there is no evidence affording a reasonable basis for a claim of proof, the claim may be stricken out. ***The finding here furnished a fair and adequate basis for testing the errors in law claimed to have been made by the court, and no corrections are warranted.*"

This appears to be a frank admission by the Court that it found the 19 admittedly false findings interpolated by Prosecutor Tiernan and Judge Wall as very helpful in coming to the conclusion it did. As applied to the 4 counts on appeal, #7, 9, 12 & 17, the above quotation from the opinion would appear to be fairly reasonable, but when extended to 19 discharged counts, and limited to one side only, it would appear to the unsophisticated petitioner as

being rank nonsense, and to furnish merely a smoke screen, behind which constitutional rights could be flaunted at will.

The failure of the Supreme Court of Errors to recognize the federal question raised by the petitioner's motion of May 31st or to pass upon it or to grant any form of relief or to take any action to correct the grievous situation set forth, amounts to a mere evasion, and this would seem to justify this Court in asserting its jurisdiction to review the decision.

PREJUDICE OF THE FIVE JUSTICES

The extreme prejudice of each of the five Justices of the Supreme Court of Errors against the petitioner has been expressed in various ways and upon many occasions, which amply demonstrate their unfitness to pass upon his case, and by so doing they deprive him of both liberty and property without due process of law as forbidden by Section 1 of the 14th Amendment of the Federal Constitution.

1. So excessively antagonistic have all of the Justices been towards the petitioner apparently because of his publication of underworld activities by members of the legal profession in and around New Haven, that they have broken the fundamental rules of criminal procedure and disregarded the integrity of their own judicial position by permitting and condoning the introduction into the RECORD of 19 or more falsifications, which they should, under the Practice Rules of their own Court, have taken the initiative to throw out, and to discipline for contempt, if not for perjury both the prosecuting attorney and the Judge who combined in an effort to deceive the Court on counts which were not before the court, and served only to corrupt the issues to the detriment of the petitioner.

2. The same five Justices likewise in a second case, *Whiteside* v *Connecticut*, 148 Conn. 77 (A48) decided on January 24, 1961, and prior to the case of *State of Connecticut* v *Whiteside*, were confronted by one or more falsifications of the Record in that case, inserted by Judge Donegan of the Municipal Court of New Haven, (A23-24) which

were unmistakable, but they withheld punishment of any kind or degree, and to all appearances considered the commission of felonies by a lawyer and Judge justifiable if performed in an effort to defeat the rights and privileges of the petitioner.

3. The same five Justices likewise in the latter case, *Whiteside* vs. *Connecticut*, demonstrated their extreme prejudice against the petitioner to such an extent that in their written opinion (A53) they even denied that he had taken proper steps to have the claimed erroneous addition deleted, whereas certified copies of his three-fold effort to have the falsification stricken out will be found on file with the certified record of this case, and are printed in the Appendix herewith (A 43, 45, 46). And after one written argument, two oral arguments, and a motion for reargument all three motions were denied, one by Judge Donegan himself and the other two by the 5 Justices of the Supreme Court of Errors. (See also A24-25)

4. The same five Justices further displayed their rancor towards the petitioner by failing to take judicial notice of how the jury had found in his favor as to the truth of his published assertions with respect to 5 of the alleged libelees who formed the basis of the appeal and neglected to perceive from the Exhibits, especially #22, that *Bernard Kopkind* is the legal head and organizer of New Haven's vice underworld; that *Sydney Alderman* and his brother, *Ralph*, are the heads of said underworld and the clients of said Kopkind; and that attorneys *Daniel Pouzzner* and *Charles Flynn* have been his law partners and as such have shared in his *criminal loot* (Ex. 15).

5. The same five Justices further demonstrated their prejudice against the petitioner by condoning the felony committed by Edward Lynch, an attorney as well as Clerk of the Court of Common Pleas, and making it appear in their memorandum of decision dated May 23, 1961 (A13) that the original judgment had been erroneously recorded, whereas that had always been correct, and the alteration in-

troduced into the Record gave every appearance of having been purposely made to mislead the 5 Justices into thinking no imprisonment was involved, whereas newspaper readers were always correctly informed, and the Supreme Court of Errors, charged with the duty of making a fair and impartial decision, was the only body in the state incorrectly informed on this point.

6. By failing to disqualify himself as an impartial judge to pass upon the guilt of the petitioner, Chief Justice Raymond E. Baldwin himself deprived him of due process of law for the following reason: to wit: Judicial notice may be taken of the fact that for two years, 1943 to 1945, Chief Justice Baldwin was Governor of the State of Connecticut with William L. Hadden as Lieutenant Governor. When Hadden was not reelected for a second term, but Baldwin was, the latter on June 13, 1945 appointed said William L. Hadden as attorney general of the state to fill the unexpired term of Francis A. Pallotti, who had resigned to become a judge of Superior Court. This all happened during the very period, 1935 to 1953, when said Hadden was a law partner of Bernard Kopkind in New Haven and as such was sharing in Kopkind's *criminal loot*, all as published in Exhibit 15, where it was pointed out that this was the proper name for Kopkind's legal fees "for doing both head work and some leg work in setting up a perfectly organized vice ring." This in itself would be sufficient to justify our Chief Justice in doing everything within human reach to stop further publication of such accurate material.

7. Likewise Justice John H. King, one of the five Justices, by failing to disqualify himself as an impartial judge in this case, deprived the petitioner of due process of law for the following reason, to wit: It will be noticed near the top of page 2 of Exhibit M, he was acting as Judge of the civil case on trial in Superior Court on November 17, 1953, when one of the most publicized victims of Senator Marcus and Kopkind was trying to obtain recovery of his losses, when Kopkind, roaming the corridors of the Court

House, spied the victim and his wife in the corridor and forthwith launched against him the brutal blackmail and intimidation attack which succeeded, in coordination with 2 other attorneys, in defeating anything like an adequate recovery. Judge King's discovery of how he was the Judge who no doubt unwittingly acquiesced in and engineered that paltry settlement unbeknownst to the victim, would find it hard to resist acquiesence in any measures which would serve to ruin and discredit the publisher.

REASONS FOR GRANTING THE WRIT

ARGUMENT I. THE STATE DENIED INFORMATION AS TO THE NATURE AND CAUSE OF THE ACCUSATION.

Connecticut Practice Book makes excellent provision for protecting the constitutional right of an accused in this respect by sections 344, 345 and 355, as the following excerpts will show:

"344. The information may charge, and is valid and sufficient if it charges, the offense for which the accused is being prosecuted in one or more of the following ways: ***

(b) By stating as much of the definition of the offense, either in terms of the common law or of the statute defining the offense or in terms of substantially the same meaning, as is sufficient to give the court and the accused notice of what offense is intended to be charged

345. (a) When an indictment or information charges an offense in accordance with the provisions of Sec. 344, but fails to inform the defendant of the particulars of the offense sufficiently to enable him to prepare his defense, or to give him such information as he is entitled to under the constitution of this state, the court may, at any time, of its own motion, and shall at the request of the defendant at or before the time at which his plea is entered, order the state's attorney to furnish a

bill of particulars containing such information as may be necessary for these purposes; *or the state's attorney may of his own motion furnish such bill of particulars.****

355. Forms for specific offenses. LIBEL: A.B. published a libel concerning C.D. in the form of a (letter, book, picture, or as the case may be; the particulars should specify the pages and lines constituting the libel, when necessary, as where it is contained in a book or pamphlet)"

The Connecticut Practice Book sets forth in Section 355 the form of the information for the crime of libel and had either George Tiernan, as the state's attorney on his own initiative, or Judge Wall as the presiding Judge, furnished the petitioner with either the *words* or the *pages* and *lines* where they might be found, which they regarded as libelous, both the state and federal constitutional requirements would have been met. Instead both Tiernan and Judge Wall persistently refused to accede to the court rules and to both state and federal constitutions and denied the information as to the nature and cause of the accusation.

In seeking to uphold the integrity and constitutionality of Connecticut practice as outlined in Par. 344, *supra*, Justice Mellitz in his opinion (A 2, line 18) quotes *State* v. *Davis*, 141 Conn. 319, 321 (1954), and that case points out with proper pride that

> "any practical question that confronted the defendant could easily have been solved by obtaining a bill of particulars. Practice Book Par. 345, provides for this, and it would seem that the objections now raised could easily have been overcome. The provision in the rules for a bill of particulars *fully protected* the defendant's right under Article first, Par. 9 of the Connecticut Constitution "to demand the nature and cause of the accusation."

Judge Mellitz is quite right as to the constitutionality of practice book provisions. It is only when the benefits are withheld that rights are invaded.

The subject of providing sufficient particulars to identify the alleged crime with which the accused is charged, is one so well established that no further time need be spent on it, save only to list a few land mark cases on the subject:

U.S. v. *Cruikshank*, 92 U.S.542, 557-558 (1875).
U.S. v. *Hess*, 124 U.S.483 (1887).
Commonwealth v. *McCance*, 164 Mass. 162, 165 (1895).
Potter v. *State*, 99 Tex.Cr.R. 47 (1925).
Jackson v. *State*, 77 S.W.223 (1903).

ARGUMENT 2: THE FIVE JUSTICES OF THE SUPREME COURT OF ERRORS WERE PREJUDICED AND COULD NOT BE EXPECTED TO RENDER A FAIR AND IMPARTIAL DECISION, THUS VIOLATING DUE PROCESS.

This reason for granting the writ of certiorari was a most unexpected development and surpasses anything the petitioner has been able to locate in the cases. It seems to be without precedent in the annals of legal history in northern states to have all five Justices in the Supreme Court of any state demonstrate their prejudice in such an unmistakable manner. *This has been such a departure from the accepted and usual course of judicial proceedings, as to call for an exercise of this Court's powers of supervision.*

Whether the form of the two motions for correction of the printed Record (A 10-13 & A 13-33) was the correct way in which to raise the federal question as to due process, petitioner is unable to say, but the substance of the motions cannot fail to disclose the purpose and to give the five Justices an opportunity to take some action to correct a gross invasion of his rights under the 14th Amendment. The case of *Rogers* v. *Alabama*, 192 U.S.226 (1903) has enough points of similarity to offer a precedent for the granting of this writ. There a lengthy motion to squash an indictment on a constitutional ground was made and denied by the state court on the ground of prolixity, permitted by

state practice. Relief was granted by this Court, which commented as follows:

> "A motion of that length, made for the sole purpose of setting up a constitutional right and distinctly claiming it, cannot be withdrawn for prolixity from the consideration of this Court under the color of local practice, because it contains a statement of matter which perhaps it would have been better to omit but which is relevant to the principal fact averred.*** We are of opinion that the Federal question is raised by the record and is properly before us. That question is disposed of by *Carter* v. *Texas*, 177 U.S.442 and it was error not to apply that decision."
> See also *Ellis* v. *Dixon*, 349 U.S. 458 (1954); *Reece* v. *Georgia*, 350 U.S. 85 (1955); *Eubanks* v. *Louisiana*, 356 U.S. 584 (1959).

We have already seen on page 17, *supra*, the inconsistent reason assigned by the five Justices for denial of the lengthy motion raising the Federal question which they choose to ignore. (A 14) This would appear to be an obvious subterfuge to evade consideration of the Federal question clearly presented.

That prejudiced judges deprive an accused of due process is well established. *American Jurisprudence*, 30A. p.56, Par.89, states under "Judges":

> "*due process of law* requires a hearing before an impartial and disinterested tribunal. Every litigant, including the state, in criminal cases, is entitled to nothing less than the cold neutrality of an impartial judge. Indeed, next in importance to the duty of rendering a righteous judgment, is that of doing it in such a manner as will beget no suspicion of the fairness and integrity of the judge. The law intends that no judge shall preside in a case in which he is not wholly free, disinterested, impartial and independent."

To same effect in *Osborne* v. *Purdome*, (Mo.) 244 SW 2nd 1005 (1951). The court said:

> "A judge who by reason of the nature or facts of the case, cannot give the accused an impartial trial, should not sit, but should call in another judge, and a failure to do so would deprive the accused of *due process.*"

No precedent anywhere has yet come to petitioner's attention which attains unto the high degree of irregularity indulged in with such a bare-faced nonchalance by prosecutor Tiernan and Judge Wall in their wholesale falsification of findings in the Record. The nearest to it is *U.S.* v. *Ford*, 9 Fed.2nd,990, (1925) where an attorney, who wanted to make a good showing falsified his Bill of Exceptions on an appeal by including 27 fictitious ones in a total of 55. In finding him guilty of contempt the court stated:

> "Little need be said to emphasize that the administration of justice depends upon the integrity of judicial proceedings and records. Falsification of either obstructs and defeats justice. In consequence, if falsifications be done or attempted intentionally in fact ***It is contempt of the authority of the court and usually also a crime.*** Done by an attorney of the court, it is more reprehensible than by others, for it is an abuse of his office, a violation of his oath, infidelity to the court to which, and not to his client, is counsel's first duty always, and a profanation of the temple of justice."

In the following three cases judgment was reversed for an accused by reason of serious misconduct of the attorney representing the state. They would do such things as misstate facts in cross examination of witnesses, of putting into the mouths of witnesses things which they had not said, of pretending to understand that a witness had said something which he had not said, of assuming prejudicial facts not in evidence and of bullying and arguing with witnesses.

Berger v. *U.S.*, 295 U.S.78, 84 (1934).
People v. *Esposito*, 224 N.Y.370 (1918).
Cook v. *Commonwealth*, 86 Ky.663 (1888).

SUMMARY

The trial court Judge and state prosecutor combined *before trial* to deprive petitioner of his constitutional right under the 6th Amendment to be informed of the nature of the charge against him, and combined *after trial* to obstruct justice by wholesale falsification of the findings in his RECORD on appeal, thereby contributing to his being deprived of due process of law on the part of the five justices of the Supreme Court of Errors who exhibited such a high degree of prejudice against the petitioner in a variety of ways that they deprived him of liberty and property without due process of law vouchsafed to him by the 14th Amendment. An impartial view and analysis of the jury verdict and the state's first 23 exhibits disclose that the petitioner made adequate proof of the truth of his statements in the 4 guilty counts upon which his appeal was based.

CONCLUSION

For the reasons herein given, petitioner prays for a writ of certiorari directed to the Supreme Court of Errors of the State of Connecticut, to the end that the judgment of that Court may be reviewed by this Court and the errors corrected which otherwise will deprive petitioner of his liberty and property without due process of law.

LORING J. WHITESIDE,
Petitioner, pro se.

June 30, 1961.

APPENDIX

SUPREME COURT OF ERRORS

January Term, 1961

STATE OF CONNECTICUT *v.* LORING WHITESIDE

Information charging the defendant with the crime of libel, brought to the Court of Common Pleas in New Haven County and tried to the jury before *Wall, J.*; verdict and judgment of guilty and appeal by the defendant. *No error.*

B. Fred Damiani, for the appellant (defendant).

George R. Tiernan, prosecuting attorney, for the appellee (state).

MELLITZ, J. The defendant was charged, in an information containing twenty-three counts, with having published a series of libels in violation of what is now General Statutes § 53-174.[1] Upon the trial to the jury, he was found guilty on four counts, and he has taken this appeal. His principal claims are that the information was fatally defective in that it lacked an allegation of malice; that the state failed to introduce evidence of actual malice in the publication of the alleged libels; that the state failed to prove that a breach of the peace resulted from the publication of the libels; and that a finding of guilt on count 12 could not be sustained when the defendant was found not guilty on other counts in which he was charged with publishing the same or similar statements. Error is assigned also in the charge, in the finding, and in rulings on evidence.

The alleged libels were published in a small weekly

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[1] "Sec. 53-174. BREACH OF THE PEACE. INTIMIDATION. LIBEL. Any person who disturbs or breaks the peace . . . or writes or prints and publicly exhibits or distributes . . . any offensive, indecent or abusive matter concerning any person, shall be fined . . . or imprisoned . . . or both."

paper, "the grapevine press," printed, published and distributed by the defendant. Each of the twenty-three issues from May 21, 1958, through October 22, 1958, was made the basis of a separate count in the information. In each count, the defendant was accused of publishing, in a designated issue of the paper, a libel concerning certain named persons, in violation of what is now § 53-174. The information was in the short form authorized by Practice Book § 344. This section provides that an offense may be charged by using the name given to it by the common law or by a statute, or by stating so much of the definition of the offense as is sufficient to give the court and the accused notice of what offense is intended to be charged. Practice Book § 350 provides that an indictment or information need not allege that the offense was committeed or the act done "maliciously," unless such characterization is necessary to charge the offense under § 344. The practice authorized by § 344 has been held to be constitutional. *State* v. *Davis*, 141 Conn. 319, 321, 106 A.2d 159. The claim of the defendant is that the alleged libels were published on occasions of privilege and therefore that an allegation of malice was essential to charge the offense under § 344; and further, that proof that the publications were made maliciously was required to sustain a conviction.

At common law, malice constitutes the essence of the offense of criminal libel and, in a prosecution, is a necessary allegation and an element in the proof. The malice referred to is merely the malice which the law implies from the publication of defamatory matter and means no more than the intent to publish it. The malice is presumed from the publication, and the presumption stands as proof. *State* v. *Pape*, 90 Conn. 98, 106, 96 A. 313. Under the statute upon which the prosecution here is based, the offense consists of the publication of the defamatory matter. That, itself, constitutes the crime, and prima facie proof of malice is not

required. Id. The situation changes, however, when it is shown that the publication was made in circumstances which the law recognizes as an occasion of privilege. *Flanagan* v. *McLane*, 87 Conn. 220, 222, 87 A. 727; *Atwater* v. *Morning News Co.*, 67 Conn. 504, 516, 34 A. 865. Such an occasion rebuts the implication of malice which the law draws from the publication of false and defamatory matter, and casts upon the state the burden of proving that the occasion had been abused and that the defendant was in fact actuated by malice toward the libelee. *State* v. *Pape*, supra, 107. The state need not set forth the circumstances surrounding the publication, showing whether the occasion was one of privilege. That burden is on the accused. Id., 106.

The information here charged the defendant with publishing libels concerning certain named persons, but those persons were not otherwise described or identified. It is the defendant's contention that they were, in fact, attorneys at law and public officers and that the occasions of the publications were privileged. The facts showing the occasions to be privileged did not, as in the *Pape* case, appear from the contents of the information. It was therefore not essential that the information contain an allegation that the publications were maliciously made, and this was so both by reason of the fact that the statute eliminated the element of malice and by reason of the provisions of Practice Book § 350. The burden was on the defendant to prove, by a fair preponderance of the evidence, his claim of privilege. *State* v. *Gardner*, 112 Conn. 121, 124, 151 A. 349; *State* v. *Pape*, supra, 106. If he sustained that burden, it became incumbent upon the state to prove that the privilege was abused and that in publishing the defamatory matter the defendant was, in fact, actuated by malice. Id., 107. The court so instructed the jury in its charge. The absence of an allegation of malice did not render the information defective.

The contention that the state introduced no evidence of malice and that there was no evidence before the jury from which malice could be found is equally without merit. Malice in fact is sufficiently shown by proof that the publications were made with improper and unjustifiable motives. *Corsello* v. *Emerson Bros., Inc.*, 106 Conn. 127, 132, 137 A. 390; *Hassett* v. *Carroll*, 85 Conn. 23, 37, 81 A. 1013; *Wynne* v. *Parsons*, 57 Conn. 73, 80, 17 A. 362; *Hotchkiss* v. *Porter*, 30 Conn. 414, 421; *Moore* v. *Stevenson*, 27 Conn. 14, 28. In its proof of malice, the state is not confined to evidence extrinsic to the contents of the publication itself. From the alleged libel, the jury may determine whether, on the face of it, there is evidence of malice. *Flanagan* v. *McLane*, supra, 222; *State* v. *Pape*, supra, 106. Here, the alleged libelous statements charged the named persons with a wide variety of unlawful and criminal acts, including fraud, perjury, blackmail, intimidation, concealment of crime, and control of organized gambling and prostitution; and further, that they would not hesitate to murder to prevent disclosure of their activities. The publications clearly disclosed such scurrilous, abusive and offensive matter that a jury plainly would be justified in concluding that the publications were made from improper and unjustifiable motives, in the absence of evidence of their truth or other evidence of good faith. Evidence of malice could be found also in the defendant's deliberate repetition of the statements in the various issues of his publication. *Ely* v. *Mason*, 97 Conn. 38, 45, 115 A. 479; *State* v. *Riggs*, 39 Conn. 498, 503. There was ample evidence before the jury to support a finding of malice.

Another contention of the defendant is that to support a conviction under the statute there must be proof of a breach of the peace. It is true that the offense here charged is spelled out in the same statute as the crime of breach of the peace, but it is a separate and distinct offense. The pub-

lishing of defamatory matter was made a statutory offense by chapter 86 of the Public Acts of 1865; Rev. 1866, p. 264, § 123; and the offense has been incorporated in the breach of the peace statute since 1875. Rev. 1875, p. 509, § 10; *State* v. *Pape*, supra, 101. At common law, the basis for a criminal prosecution for the publication of a libel is its tendency to create a breach of the peace; it is immaterial that no one was incited to commit any act by reason of the libel. *State* v. *Avery*, 7 Conn. 266, 269. The gravamen of the offense under the statute is that the publication affects injuriously the peace and good order of society; *State* v. *Gardner*, supra; and the offense is complete when the accused has done the thing set forth in the statute, irrespective of whether any other act resulted from it. The court correctly ruled that it was not incumbent upon the state to prove that a disturbance of the public peace actually resulted from the publications.

The defendant contends that his conviction on count 12 is invalid and should be set aside because he was found not guilty on a number of counts in which he was charged with publishing, on other dates, defamatory matter similar to that charged in count 12 and concerning the same persons. Each count in the information charged a separate and distinct offense and was complete in itself. The only question is whether the evidence was sufficient to support a conviction on count 12, irrespective of the verdict on the other counts. Except as to the claim, already considered, that the state presented no evidence of malice, the defendant has not questioned the sufficiency of the evidence to warrant a conviction on count 12. There was no basis for the court to disturb the verdict on that count.

The defendant's objection to the inclusion of certain paragraphs in the finding involves a misconception of the nature of the finding in a jury trial. It is merely a narrative of the facts claimed to have been proved by each side, made

for the purpose of fairly presenting any claimed errors in the charge or rulings of the court. *Szela* v. *Johnson Motor Lines, Inc.*, 145 Conn. 714, 719, 146 A.2d 910. If there is no evidence affording a reasonable basis for a claim of proof, the claim may be stricken out; *Schmeltz* v. *Tracy*, 119 Conn. 492, 494, 177 A. 520; but a correction will not be made merely to secure meticulous accuracy as to details in the claims of proof. *Daly Bros., Inc.* v. *Spallone*, 114 Conn. 236, 243, 158 A. 237; *Brown* v. *Goodwin*, 110 Conn. 217, 218, 147 A. 673. The finding here furnished a fair and adequate basis for testing the errors in law claimed to have been made by the court, and no corrections are warranted.

Error is assigned in the failure of the court to comply with numerous requests to charge and in various paragraphs of the charge as delivered. The substance of the requests, to the extent that they were correct and adapted to the issues, was incorporated in the charge. The court was not required to charge in the language of the requests. Of the paragraphs of the charge as delivered to which the defendant took exception, only one requires consideration. This has reference to the instruction given by the court with relation to article first, § 7, of the constitution of Connecticut, which provides: "In all prosecutions or indictments for libels, the truth may be given in evidence, and the jury shall have the right to determine the law and the facts, under the direction of the court." The defendant contends that in accordance with this provision the court should have charged that the jury were, under the court's direction, the judges of the law as well as of the facts. After giving the jury proper instructions as to the duty of the court to explain the law and the duty of the jury to decide the facts and to accept the law as explained by the court, the court read the text of the constitutional provision and then informed the jury that the instructions given with respect to whether the matters published were defamatory or not were only advisory. This in-

struction was, if anything, more favorable to the defendant than he was entitled to, although ample authority supports the view adopted by the court. *Harrington* v. *Butte Miner Co.*, 48 Mont. 550, 139 P. 451 & note, 38 Am. & Eng. Ann. Cas. 1261, 1271. The object of the constitutional provision was to put libel cases on the same footing as other criminal prosecutions; *Gray* v. *Mossman*, 91 Conn. 430, 443, 99 A. 1062; 2 Cooley, Constitutional Limitations (8th Ed.) p. 955; and to give the jury the right to return a general verdict of guilty or not guilty, as in other criminal cases. 2 Wharton, Criminal Law and Procedure § 889; *Oakes* v. *State*, 98 Miss. 80, 86, 54 So. 79. It does not have the effect of relieving the jury of the duty of accepting and applying to the facts the law as given by the court. 2 Wharton, loc. cit. Practically the identical question was presented in *State* v. *Gannon*, 75 Conn. 206, 52 A. 727, where the statute then in force regarding the respective functions of court and jury in criminal cases was under consideration. The statute provided that the court should submit to the jury's consideration both the law and the facts. Earlier cases, to the extent that they could be regarded as assuming that the jury could lawfully disregard the law as stated by the court, were expressly overruled (p. 235), and it was held (p. 221) that in no sense did the statute authorize an independent determination by the jury of what the law was. An instruction permitting the jury to determine the law was held (p. 234) to be erroneous. The constitutional provision here involved has not curtailed the right of the court to determine the law to be applied by the jury in the rendition of a general verdict in a prosecution for libel.

Finally, error is assigned in a number of rulings on evidence. During the examination of a witness by the defendant, the state objected to a question but assigned no ground. The court sustained the objection and refused the defendant's request to have the ground of objection stated.

Under the provisions of Practice Book § 155, whenever an objection to the admission of evidence is made, the grounds upon which the evidence is claimed or upon which the objection is made are required to be stated. The defendant was entitled to have the ground of the objection stated. To avail himself of the rule, however, he was required to state the ground for his claim of admissibility. He neglected to do so, and since he failed to comply with the rule, and no ground of objection was given, the exclusion of the evidence cannot be held to constitute reversible error. *Casalo* v. *Claro*, 147 Conn. 625, 630, 165 A.2d 153. Furthermore, the ruling related to a count on which the defendant was found not guilty, and the defendant could not have been harmed by the ruling. In another assignment, the defendant complains of the exclusion of testimony he sought to give as to the origin of certain statements he had published. He was allowed to testify concerning his source of information but not concerning the source from which his informant had acquired the material. Such evidence would clearly be objectionable as hearsay and was properly excluded. Evidence to prove truth must come from witnesses who have knowledge of the facts. 3 Underhill, Criminal Evidence (5th Ed.) § 697. A number of other rulings on evidence which were assigned as error were clearly correct and do not require discussion.

There is no error.

In this opinion BALDWIN, C. J., KING and SHEA, JS., concurred; MURPHY, J., concurred in the result.

[Date of Supreme Court Judgment, March 21, 1961]

[Decision Announced April 4, 1961]

[Reported in 148 Conn. 208-218, Part 3 of advance sheets]

No. 4952

SUPREME COURT OF ERRORS

New Haven County — February Term, 1960

State of Connecticut v. Loring Whiteside

April 6, 1961

MOTION TO REARGUE THE DEFENDANT'S APPEAL FROM THE COURT OF COMMON PLEAS FOR NEW HAVEN COUNTY

The defendant herein requests permission to reargue the above matter before the Supreme Court of Errors of the State of Connecticut on the ground that (1) the information did not sufficiently apprise the accused of the charges against him to enable him to properly prepare his defense and in consequence violated Article VI of the Amendments to the Constitution of the United States, requiring that the accused be informed of the nature and cause of the accusation, and the Supreme Court of Errors failed to consider this point in its memorandum of decision; (2) in subjecting the accused to the same charge in one count upon which he had been discharged in one or more other counts, constitutes double jeopardy in violation of Article V of the Amendments to the Constitution of the United States, and the Supreme Court of Errors did not consider this point in its memorandum of decision; (3) the Supreme Court of Errors did not consider, act upon or preserve the defendant's right to freedom of the press as required by Article I of the Amendments to the Constitution of the United States.

(Signed) Loring J. Whiteside
Defendant pro se.

(Filed Clerk Supreme Court of Errors for New Haven County April 6, 1961)

April 11, 1961, Motion denied. By the Court, Baldwin, C. J.

May 4, 1961

MOTION FOR CORRECTION OF THE PRINTED RECORD

WHEREAS the defendant in this case has in preparation a Petition to the Supreme Court of the United States for a WRIT OF CERTIORARI to this Court, pertaining to its judgment in this case as announced April 4, 1961 and later confirmed by its denial of defendant's Motion for Reargument on April 11, 1961; and

WHEREAS at least one copy of the printed Record in this case must accompany said Petition as required by Rule 21 of the Rules of the Supreme Court of the United States; and

WHEREAS certain errors have been inserted into the printed RECORD of this case as presented to this Court, which require correction before being submitted to the United States Supreme Court; and

WHEREAS these errors fall into 3 distinct classes as follows:

O N E

An error in the JUDGMENT as recorded in the office of the clerk of the Court of Common Pleas of New Haven County. The last 2 lines on page 12 of the printed RECORD as signed by Edward J. Lynch, Clerk, and certified by Edward Horwitz, Clerk of the Supreme Court of Errors, New Haven County, set forth a portion of Judge Wall's JUDGMENT in the following words:

> "and further orders that the execution of the jail sentence be suspended, and that the defendant be place on probation."

Whereas, said 2 lines are clearly erroneous in 3 important aspects of that part of the JUDGMENT, which should have read as follows:

"and orders that the sentences run consecutively, that the execution of the jail sentence be suspended after the serving of five days on each count, and that the defendant be placed on probation for Two years."

It is quite evident that these two clerks erred and led the Court into thinking that no imprisonment was involved, as they omitted the clause about the sentences running consecutively, omitted the 5 days to be served on each count, and omitted that most extraordinary provision of 2 full years of probation, the meaning and purpose of which is open to much speculation.

T W O

The 2nd error occurs on page 24 of the Record in the FINDING #28 of Judge Wall, beginning near the end of the 8th line from the bottom of the page, where he is making a statement of the utterances allegedly made by defendant in Issue No. 20, Count 9, which is one of the allegedly guilty counts forming the basis of the appeal. Judge Wall credits the defendant with writing "That Lip's Restaurant in New Haven operates the largest baseball pool in the City of New Haven with police immunity due to the fact that the owner Weinstein has a Catholic Priest for a partner."

Such a statement is a gross distortion of the contents of that particular paragraph, which reads as follows:

"Another story told for gospel truth encountered especially in the State Street taverns, is that Louis (Weinstein) has for a partner none other than a Catholic Priest, and that this accounts for his remarkable immunity from arrest. It also serves to sweeten up in sordid minds the odor of the place, and to keep its flag of purity flying high. My impression is that both stories are deliberately falsified inventions calculated to conceal the real owners, or higher-ups, and fed into circulation regardless of the slander involved to two of our noblest professions."

So false a finding, in and of itself, would be sufficient to prejudice any sincere member of the Catholic Church against the good faith of the defendant.

T H R E E

The 3rd error consists of a long series of 19 findings of Judge Wall numbered 13, 15, 17, 19, 21, 23, 27, 31, 33, 37, 39, 41, 43, 47, 49, 51, 53, 55, & 57, found on pages 21 to 31 of the RECORD, in all of which he states without equivocation that certain specified statements appearing in the 19 not guilty counts, were *false and malicious;* whereas the jury of 12 men and women had already spoken on the subject which was solely within their constitutional province, under Section 7, Article I of the Connecticut State Constitution, and had pronounced the defendant innocent of all guilt as to anything and everything stated in those 19 counts, and Judge Wall himself had discharged the defendant on every one of those 19 counts. For him now to set forth an erroneous finding on those same 19 counts, would appear to constitute the height of judicial indiscretion, especially when the State found no good reason to appeal them as being against the weight of the evidence.

The presentation of Judge Wall of all 23 counts as *guilty ones*, when 19 of them were *not guilty*, could only result in prejudice and confusion. Only the 4 *guilty* counts were on appeal; the others were all discharged. And although this Court in its decision remarked that these additional 19 findings of guilt "furnished a fair and adequate basis for testing the errors in law claimed to have been made by the Court," it is respectfully submitted that no erroneous finding can be of any legitimate value in arriving at a fair decision. And in the last paragraph of the decision this Court demonstrated this fact by turning to the *jury verdict* as a source of light in dismissing as reversible error a ruling

relating to a count upon which the jury found the defendant not guilty.

WHEREFORE, the defendant moves this Court for an ORDER CORRECTING THE PRINTED RECORD in this case, purging it of the 3 classes of palpable errors set forth above, and for such other relief or action as this Court deems proper.

(Signed) Loring J. Whiteside
Defendant pro se.

(Court of Common Pleas)
(Filed May 8, 1961, Lynch, Clerk)
(Filed with Clerk of Supreme Court of Errors for New Haven County May 22, 1961)

May 23, 1961

It appearing to this court that the clerk of the Court of Common Pleas erroneously recorded in the original judgment file the judgment of the trial court and has since corrected its judgment file to conform to the judgment of the court, it is ordered that the judgment file in the printed record in this court be corrected to conform to the corrected judgment file. The motion for correction of the printed record, so far as the second and third grounds of correction are concerned, is denied.
See Practice Book Sections 392, 396.

By the Court, Baldwin, C. J.

MOTION FOR PERMISSION TO FILE ANNEXED SUPPLEMENTARY MOTION FOR CORRECTION OF THE PRINTED RECORD

WHEREAS on May 22, 1961 the Chief Justice of this Court is reported to the defendant as having consented to entertain his motion of May 4, 1961 for correction of the Printed Record in this case for presentation of same to the

United States Supreme Court in connection with a Petition for a writ of certiorari; and

WHEREAS defendant has come across additional errors in the Record of this case of so serious a nature that they likewise should be included among the corrections to be made;

NOW THEREFORE, defendant respectfully moves this Court that he be granted permission to file the ANNEXED SUPPLEMENTARY MOTION FOR CORRECTION OF THE PRINTED RECORD herein, for the consideration of and action by this Court, together with such other relief or action as this Court deems proper.

(Signed) Loring J. Whiteside
Defendant pro se.

(Filed with Supreme Court of Errors May 24, 1961)

Motion denied, corrections of a finding by this Court are made only in response to assignments of error filed before the determination of the appeal pursuant to Sections 396, 400 of the Connecticut Practice Book. June 7, 1961.

By the Court, Baldwin, C. J.

May 23, 1961

SUPPLEMENTARY MOTION FOR CORRECTION OF THE PRINTED RECORD

WHEREAS the defendant in this case on May 5, 1961 presented to Edward Horwitz, clerk of this Court, an original and 8 copies of a MOTION FOR CORRECTION OF THE PRINTED RECORD, dated May 4, 1961, which said clerk refused to accept, saying that in the absence of any rule specifically covering the procedure to be followed in filing such a motion, it was his ruling that it should be filed with Edward J. Lynch, Clerk of the Court of Common Pleas, for the attention of the trial Judge Robert A. Wall; and

WHEREAS defendant forthwith on said May 5th presented said motion to said Edward J. Lynch for filing, who delayed filing until May 8th, and not until May 22nd did he advise defendant that Chief Justice Baldwin had on that day consented to entertain the motion in view of Judge Wall's belief that he had no power to act thereon; and

WHEREAS defendant has come across additional errors in the findings of Judge Wall in the RECORD of this case of so serious a nature, that they also should be included among the corrections to be made. These additional errors which are made the basis of this supplemental motion for correction, are as follows:

1. In FINDING #11 beginning at the bottom of page 19 of the RECORD and continuing through to the end of the first paragraph on page 20, Judge Wall states that offensive, indecent, scurrilous and abusive matter was published in the 23 weekly issues covered by the entire information, concerning 16 prominent lawyers, business men, office holders, police heads, one banker and one former congressman, one judge, one state senator and one former city attorney, all set forth by name; *BUT THE FINDING FAILS TO STATE—*

a. That all of the matter published about 10 of the named prominent persons had been set forth in the issues upon which the jury had found the defendant *NOT GUILTY*, and thus the defendant had been *completely exonerated* of any wrongdoing of any kind as to *every word* he had published concerning these 10 prominent persons, including the judge, the banker, the former congressman, the state senator and one of the police heads.

b. That the remaining 6 persons, who constituted the sole list of alleged libelees in this appeal were composed of BERNARD KOPKIND, the legal architect and king-

pin of New Haven's vice underworld; his two secret clients—

SYDNEY & RALPH ALDERMAN, the two heads of said vice underworld; and his two law partners—

CHARLES FLYNN & DANIEL POUZZNER, who shared in Kopkind's illegal fees; &

CHIEF JOHN F. MONAHAN of West Haven

c. The truth as to Kopkind's position as the legal head of the vice underground for his two clients, the Aldermans, and their position as head vice lords, was so well established by the NOT GUILTY jury verdict on Court 22 (Issue 33), and by the 11 other *not guilty* issues in Counts 1, 2, 3, 4, 5, 6, 8, 11, 14, 15 and 18, that there is nothing new left in the 4 guilty counts, 7, 9, 12 or 17 to be considered. The same is true of Kopkind's law partner, Flynn, who was so thoroughly covered in the *not guilty* Counts 1, 2, 4, 5, 10 & 14, that nothing new is left in guilty counts 9 and 12 that requires further proof. POUZZNER, who was Kopkind's law partner and shared in his illegal fees during the 24 years Kopkind was active in building up and cementing together the very successful and well managed vice underground, is extensively discussed in Issues 25 & 26 (Not guilty counts 14 & 15), where his broad participation in vice proceeds, far exceeds and comprehends everything contained in guilty count 17.

d. Chief John F. Monahan is the sole alleged libelee left to be considered on this appeal, and if guilty Issue 18 (Count 7) is read with care, it soon becomes clear that the defendant was upholding and speaking in defense of Chief Monahan instead of charging him with guilt for anything derogatory the prostitute madam had been saying about him.

As it stands, finding #11 is a brazen misstatement of the facts and could not fail to arouse vast prejudice and

confusion. It is unworthy of a judicial mind. Unless the 10 names of Barbieri, Eagan, Evans, Foote, Hannon, Hoyt, Longbotham, Marcus, Shanley and Winnick are stricken, that finding is 100% falsification with respect to those 10 men; and in view of the jury's verdict of NOT GUILTY on the 19 counts, it is likewise a falsification with respect to Kopkind, Flynn, Pouzzner and the two Aldermans, and it seeks to imply a libel of Chief Monahan, which never did exist.

2. Tucked away in lines 10 and 11 of FINDING #36 on page 26 of the RECORD is a finding that the defendant wrote in Issue 24 (Count 13)—

"that a suit for libel against the defendant would be useless." Such a statement, had it really been made by the defendant, would seem to indicate that he felt free to utter and publish all kinds of libels about prominent men against whom he had grudges, and could not be touched because he was destitute of property out of which a *civil* judgment could be collected. Hence a criminal prosecution such as this would be the only way to reach him and effect a stoppage of his torrent of abuse. But Judge Wall JUST REVERSED WHAT WAS PUBLISHED, as is evident from the following quotation from Issue 24:

> "SUIT AGAINST ME FOR LIBEL WOULD BE USELESS
>
> So said Charlie Flynn in that famous hour and 25 minute telephone conversation reported on June 11th as being held on June 9th. Said I did not have anything in my name. Well, I grant I am not worth much. I do have the multilith and a paper cutter in my name and pay taxes on them. I also have $2141.19 on pass book 5684 in the 2nd Federal Savings & Loan Association, and $1246.56 in the New Haven Building & Loan Association on book 1633. This would help a little bit if any of the Type Xers mentioned in these columns should succeed in getting a judgment against me. *How-*

ever, be it known to all readers of this publication that I am after the truth, be it for or against me.,—so that if any of you discover any error in these pages, you will oblige me to make it known, and I will retract any untruth. Flynn did add in his talk on June 9th that at that time some 60 odd people were reading my statements, but that if they brought suit, 175,000 people would be hearing them, in fact, he said, the whole state would be reading my stuff if they brought suit against me, so it was really better to let me plod along in my own limited field."

So Judge Wall put Charlie Flynn's words in the defendant's mouth, which amounted to an inescapable falsification of what was written, calculated to drive the Judges of the High Court into a conviction of the defendant, for only thereby could he be blocked. Is there any one on earth blind enough not to see that this one false line should be stricken out?

3. Still another distinct class of errors was introduced into the RECORD by Judge Wall in his findings #18, 28, 36, 48, 69, 73 and 81, found respectively on pages 21, 24, 26, 30, 32 and 33. This class of errors consists of dragging in and presenting to the Supreme Court Judges as libeled characters (a) the Grievance Committee of New Haven County; (b) its investigator and paid legal adviser, Joseph B. Morse; (3) Peggy Botte and (d) her husband, Alec; and (e) a character known as John Murphy of New Jersey. NONE OF WHOM did the prosecutor, GEORGE TIERNAN, deem fit causes for the charge of criminal libel against the defendant, so that NOTHING SAID ABOUT THEM IN ANY OF THE 23 ISSUES WAS AT ISSUE IN THE PROSECUTION. THE ONLY POSSIBLE PURPOSE OF PRESENTING THEM AS FINDINGS FOR THE SUPREME COURT, would be to besmirch the defendant in the eyes of the Court and arouse its prejudice against him. They were relevant to nothing and were

utterly immaterial. Findings 36 and 73 in which Judge Wali holds up Peggy's uterus and her illegitimate child for judicial inspection almost provoke a smile when it is known she and her husband, Alec, let George Tiernan know in no uncertain terms that they did not want to be mentioned as libeled persons in this prosecution. This supplementary motion asks that all mention of the 5 characters named above be stricken out of the 7 numbered findings set forth above.

THE ATTENTION OF THIS COURT IS CALLED TO THE FOLLOWING MATTERS STEMMING FROM THE ABNORMAL STATE OF THE PRINTED RECORD

No court with such a record before it could be expected to render a fair or impartial decision. So many things had been either distorted or falsified that the entire case on appeal was out of focus. Every issue was blurred. *Due process of law* as required by Article XIV, Section 1, of the Amendments to the Constitution of the United States, was obliterated. You were depriving the defendant of both liberty and property WITHOUT DUE PROCESS OF LAW, contrary both to the Constitution of the United States and the Connecticut State Constitution, Article FIRST, Section 9.

The difficulties under which you labored are nowhere more apparent than in that part of your opinion where you stated that

> "Evidence of malice could be found also in the defendant's deliberate repetition of the statements in the various issues of his publication."

The jury took quite another view of that deliberate repetition, and saw fit to declare the defendant innocent of all malice and wrongdoing in 12 heavily loaded counts involv-

ing former city attorney, Bernard Kopkind, and in 6 heavily loaded counts involving his law partner, Charles L. Flynn. As to Kopkind see Counts #1, 2, 3, 4, 5, 6, 8, 11, 14, 15, 18 & 22. As to Flynn see Counts 1, 2, 4, 5, 10 and 14. Try hard as you might to overcome it, the erroneous findings of Judge Wall as printed in the RECORD on all these counts, overshadowed the verdict of the jury, who under the Connecticut Constitution, Article FIRST, Section 7, "have the right to determine the law and the facts, under the direction of the Court."

Again and again and again in all of those 19 NOT GUILTY counts the jury did its best to tell you and Judge Wall that they were satisfied from all the evidence they had heard that the defendant had done no wrong, but was to be commended for exposing such corruption as is involved in that wide variety of unlawful and criminal acts set forth in your opinion "including fraud, perjury, blackmail, intimidation, concealment of crime, and control of organized gambling and prostitution; and further, that they would not hesitate to murder to prevent disclosure of their activities." You must know, as the Justices of the highest Court in this State, that *every word* and *every statement* in those 19 NOT GUILTY issues may be published to the world for the truth they are, without any hindrance or interference, either civil or criminal, from now to the end of time. That means that BERNARD KOPKIND'S top control of organized gambling and prostitution in this area may be fearlessly broadcast by the defendant, much to the dismay of Kopkind and his numerous retinue of attorneys, friends and beneficiaries. Because you had before you a PRINTED RECORD riddled with errors of all kinds planted there by all three of the Court Officials charged with the responsibility of preparing that RECORD for you, you were doomed from the start in any effort to provide due process of law for the defendant.

YOU HAD NO WAY OF KNOWING OR SUSPECTING that the judgment record of Judge Wall on page 12 of the RECORD had been certified to you wrongfully by the Clerks of both your own Court and the Court of Common Pleas. The original was intact and correct in the files of Edward J. Lynch, but when he certified it for use in the RECORD as required by Statute 51-210, he altered it in 3 very important particulars, and thus committed a felony as set forth in Statute 52-165, for which he is liable to imprisonment up to 5 years. As you no doubt know, he is the brother of Frank M. Lynch, one of the political bosses in this area, who within the past few weeks was quoted in the New Haven Register as recommending BERNARD KOPKIND for one of the new Superior Court judgeships. Can anyone imagine a greater burlesque of the judiciary of this State? And public records will show that the Clerk of your Court for New Haven County, Edward Horwitz, is even closer to KOPKIND than Ed Lynch, for he was President of Realty, Inc., for 3 years when KOPKIND was treasurer, and he was President of Leaseholds, Inc., for a year or two when KOPKIND was Secretary; and his deceased brother, George J. Horwitz, with members of his immediate family, owned one-third interest in central New Haven business property which was sold in 1958 to REDEVELOPMENT for $380,000, with KOPKIND and Harry Sugarman each owning one of the other two-thirds.

"THE AUTHORITIES ARE UNIFORM"

The following is a quotation from the opinion of the Court in the case of Ex parte Nelson, 157 S.W.794 (Mo.) 1913, at page 808:

> "The authorities are uniform in holding that these constitutional provisions (Mo.Const.Art.2,Par.30 & U.S.Const.Art.14,Par.1 relating to due process of law) are applicable to every form of procedure where the

> life, liberty or property of a person is sought to be taken from him, whether it be by the trial or *appellate court*, sitting alone or aided by a jury; upon information, indictment, or citation or *appeal*, charging with a *misdemeanor*, felony, contempt of court, inferior or superior, or with any other violation of the law where a judgment or conviction is asked taking from him his life, liberty or property.**Even the most guilty are entitled to a *fair and impartial* trial before they can be legally pronounced guilty."

THIS BRINGS US TO THE SUBJECT OF WHETHER THE JUSTICES OF YOUR COURT WERE IMPARTIAL IN HANDLING THE DEFENDANT'S APPEAL

In Osborne v Purdome, 244 S.W. 2nd 1005 (Mo.) 1951, the Court stated

> "A judge who by reason of the nature or facts of the case, cannot give the accused an *impartial trial* should not sit, but should call in another judge, and a failure to do so would deprive the accused of due process."

In State v Slate, Judge, 214 S.W.85 (Mo.) 1919, a writ of prohibition was issued by the High Court prohibiting Judge Slate from presiding over a criminal trial because he did not possess that unprejudiced and disinterested state of mind which is essential and necessary as a matter or right in the proper administration of justice.

You will recall having had before you for decision recently a small case entitled *Loring J. Whiteside* vs *State of Connecticut*, decision in which was made January 24, 1961 and is reported in 148 Conn.77. By writ of error the plaintiff was contesting the right of Judge Donegan to impose a $100 fine for a contempt of court which the Judge himself clearly stated consisted of *filing* a contemptuous pleading which had occurred prior to the opening of court and prior to the hour set for its opening. Then after the opening of court Judge Donegan expressly *waived* his right, such as it

might have been, to impose any penalty, but 7 hours later changed his mind and imposed the $100 fine. However, what was done by your Court in deciding the issues is of small moment compared with the *monumental contempt* with which Judge Donegan treated your own individual dignity and integrity as Justices of the highest Court in this State. Eleven days after imposing the fine, when making up or going over the documents to be printed in the RECORD, he did 4 things: (1) He crossed out the statement that he had "changed his mind"; (2) He added a *new basis* for the fine in these words "together with the argument on the motion in court"; (3) He falsely altered the court stenographer's certified minutes by adding 3 words *"at this time"*, hoping thereby to indicate that he was *reserving* decision instead of making one; (4) He then certified the false alteration.

The plaintiff was handling his own case and was naive enough to think that if a Connecticut lawyer was bound by his oath to "do no falsehood, nor consent to any to be done in court, and, if you know of any to be done, you will give information thereof to the judges, or one of them, that it may be reformed," he, acting as his own lawyer, would be bound by the same obligations. Also as a citizen of the United States he had become familiar with the crime of MISPRISION OF FELONY, as set forth in Title 18, U.S. Criminal Code, Par. 4, and knew definitely that the Vermont Supreme Court held such a crime to be part of their common law and presumed such to be the case also in his own state. Accordingly the plaintiff set forth the amazing behavior of Judge Donegan both in his brief, in his appendix, his reply brief, as well as in his oral argument, but got nothing but stony stares in response. Dead pan silence reigned. Thinking perhaps that the 5 Justices were regarding him as the typical professional criminal who thinks everyone else is wrong but himself, especially since the

RECORD showed he had been found GUILTY of 24 counts of criminal libel by Judge Donegan in City Court, the plaintiff managed to volunteer the information that on appeal to Common Pleas Court, a jury had found him NOT GUILTY on 19 of the counts and that 11 of the 12 jurors had battled nearly 14 hours with the 12th juror in an effort to exonerate the publisher 100% and to find him NOT GUILTY on *all counts;* and that when the 11 found it was a choice between a disagreement with no verdict possible, or yielding 4 counts demanded by the lady dissenter, they carefully selected as the 4 guilty counts those which they figured would do the publisher the least harm, because they were finding him NOT GUILTY for saying the same things in a wide variety of other counts. The Chief Justice smiled and said the publisher had better not go any further on that subject in view of the appeal coming up to them on those 4 counts.

But the publisher did not stop with merely *reporting* the actions of Judge Donegan. He made a motion on September 1, 1960 for the CORRECTION OF THE RECORD, to have stricken out the words "at this time" wrongfully inserted by Judge Donegan in the transcript. The oral argument was set for hearing on October 4th and was accompanied by a written argument which showed conclusively from internal evidence that it was impossible for those 3 words to fit in between the two clauses, before and after, and make the sense Judge Donegan intended. The motion was denied. Another motion for permission to reargue the motion was filed on October 8 and it was denied. A motion was made and argued before Judge Donegan on September 30th to have those 3 words stricken out of the RECORD because it was clear they did not fit. He denied the motion. Three times timely effort was made to correct the RECORD and rid it of that falsification, with no success, and yet the unanimous decision of your Court written by Justice King

states in its last paragraph that "The accused took no proper steps to have the claimed erroneous addition deleted." What recourse has a litigant who has done everything the law and the rules require to have a falsification corrected in the record 3 times, and then to have the 5 Justices unanimously state that he *did not do* what the Court record clearly shows he *did do*.

The only thing left for the publisher to do was to sum up the true facts about Judge Donegan and publish them in his newspaper. This he did under date of December 21, 1960 in Issue 138, which was not released to the public until the evening of Monday, February 27, 1961. Two weeks later on March 15 Judge Donegan was stricken with a heart attack and died at the untimely age of 57. Copy of that Donegan Issue is annexed hereto marked "EXHIBIT X". The 5 Justices of the Supreme Court will recognize that much of the material in this EXHIBIT X was presented to them in oral argument on December 8, 1960.

Nothing could account for the strange conduct of all 5 Justices of the Supreme Court except a very deep seated prejudice against the publisher who had laid bare not only the legal architect and king-pin of the VICE UNDER-WORLD in this area, ex City Court Prosecutor, Bernard Kopkind, but had also laid bare the desperate effort Judge Donegan had put forth to stop him in his tracks. The exposure of such an alarming number of prominent figures in the legal and political world by this midget newspaper just had to be stopped somehow. Judge Donegan gave his life in the back firing of his efforts to stop the tiny newspaper. The way in which the 5 Justices of this Court used the case of *Papallo* v *Meriden Savings Bank*, 128 Conn.289 in the last paragraph of their decision to draw a robe of righteousness over poor Donegan, is indicative of their prejudices against the defendant, especially after he had made the inapplicability of that case the basis of his motion

for reargument of the motion for correction of the record, referred to above. That case deals with making accurate what is inaccurate, and not with making inaccurate what is accurate.

FURTHER EVIDENCE OF JUDICIAL PREJUDICE

The PRINTED RECORD in the present case has been flooded by the trial Judge and the two court clerks with a great variety of erroneous statements and findings, slanted distortions, and even outright falsifications, and numerous immaterial matters which have no bearing upon the appeal and are calculated merely to place the defendant in an abnormally bad light. None of the Supreme Court Justices were offended in the least by what would amount to major contempt in most courts. A false statement in any Record is a serious offense, but in the two cases involving this defendant, the 5 Justices seem to be unanimous in failing to recognize, rebuke or punish serious errors and falsifications which helped make the defendant look black The opinions in both cases reflect the innate prejudices of the entire Court, so as to completely deprive the defendant of due process of law in both cases, but of course only the criminal libel case is being made the basis for a writ of certiorari.

Even if no one of the 5 Justices of this Court knew before that attorney Kopkind was the very successful fabricator and legal administrator of the vice underworld in this part of the country, they could not help knowing it after reading Issue 33 (Count 22) of the Grapevine and noting the jury verdict of not guilty after a 6 week trial. On top of that were 11 other not guilty counts which gave them a wealth of information about Kopkind's underworld activities and his betrayal of a client. Is not their failure to act in some way to protect the public against such a scandalous member of the bar, the best possible evidence of their

prejudice against the defendant and his efforts to expose and eradicate corruption?

WHEREFORE, this SUPPLEMENTARY MOTION, in addition to the original motion for the Correction of the Printed Record in this case dated May 4, 1961, is presented herewith for the striking out or correction of the errors named, and for such other relief or action as this Court deems proper.

(Signed) Loring J. Whiteside
Defendant pro se.

EXHIBIT X

Issue 138 the grapevine press December 21, 1960
Woodbridge — Connecticut

A weekly newspaper published in the interest of truth & righteousness.

Single issues—35¢. Subscription price—$5 per year of 48 issues.

JUDGE HAROLD C. DONEGAN

PUTS POLITICS BEFORE ETHICS & THE COMMISSION OF FELONIES BEFORE TRUTH

Political bias is bad enough in the ordinary citizen because it is evidence of a closed mind with limited vision. But experience has demonstrated over the years that justice suffers and sometimes disappears if JUDGES engage in political activity during their term in office in a judicial capacity. Conscientious judges of their own volition shun all political activity while on the bench, and in this state SECTION 28 of the CANONS OF JUDICIAL ETHICS states:

> "It is inevitable that suspicion of being warped by political bias will attach to a judge who becomes the active

promoter of the interests of one political party, as against another. He should avoid making political speeches, or – the public endorsement of candidates for political office and participation in party conventions."

Neither Conscience Nor Judicial Ethics Bother Donegan

He has long been known as a loyal ORGANIZATION MAN who follows the Democratic Party line with strict adherence. He once held the highest official office in the party in 1948 and 1949 when he was New Haven Town Chairman. The party has bestowed upon him a variety of professional honors, such as Clerk of City Court back in 1933 and 1934, Chief Prosecutor in City Court in 1950 and 1951, and a long stretch as Assistant Corporation Counsel under Mayor Murphy from 1936 to 1946. Then on July 1, 1954 he became Judge of City Court and has served in that position ever since. He can very readily be called a CHRONIC DEMOCRAT, never dissident.

In the summer of 1958 when the ORGANIZATION DEMOCRATS put up Frank Piccolo for State Senator in the 11th district and his nomination was being contested in a primary in September, Donegan, then Judge, endorsed the candidacy of Frank Piccolo, actively worked for his nomination in the September primary, and participated in the New Haven party conventions. Not content with casual aid, Donegan was scheduled as the principal speaker and organizer at a meeting of party workers held at the home of William T. DeTullio several days before the primary. In the course of his remarks to those present he is reported as having said, "If there is anyone here that has been friendly to Sal, let him leave the room right now. We don't want him here." No one left, but there was at least one gentleman present, else we could not have provided for you the quotation above. The "Sal" referred to by Donegan is the very popular Alderman from the 12th ward, then and now, who

was the contender for the State Senatorial nomination against Piccolo—Sal Ferraiuolo. This is a good sample of the bull-dozing tactics brother Donegan employs.

But his judge-ship was not content to mind his own judicial business and the requirements of judicial ethics in this state and the nation, he had to join the telephone squad for that primary and call up as many of his friends and acquaintances in the 32nd ward and in the 11th district to nudge them into voting for Piccolo, as he could spare the time for. And we must remember that a nudge from a judge usually bears fruit among a large fraction of the people.

But even that was not enough for this politically nurtured judge. He had to go over to the polls on primary day and stand at the proper distance away and solicit votes for Piccolo in the 32nd ward where he lives. Could you ever find a better example of the proverbial BULL IN THE CHINA SHOP of voters, than HIS HONOR, LORD DONEGAN? For a likeness of his judge-ship, see next page.

Section 34 of the Canons of Judicial Ethics

This is another important CANON which provides that a judge should be impartial and that he should administer justice according to the law. Nothing could be more simple or more obvious. Yet Judge Donegan slaps both requirements down when he feels like it and in open court will deny a man his constitutional rights without any mercy if it suits his mood and determination. One of the best examples of Donegan's violation of this CANON was set forth in Issue 37 of this publication, under date of November 19, 1958, in which your editor called upon Judge Donegan to disqualify himself for further sitting as judge in his trial for criminal libel, for one reason, among others, that he had absolutely denied your editor's right under the constitution to have the charges and counts against him read in open

court before he was called upon to plead. No such illegal stand was taken by Judge Wall upon appeal to the Common Pleas Court, where the charges and issues were read in full as a matter of course.

Political Duty Outweighs Judicial Duty in Donegan's Mind

Upon his own initiative Donegan should have disqualified himself from sitting on the trial of your editor in November 1958. The trial was prompted solely from political motives—1st, to throw sand in the eyes of the public and thus obscure the truth as to Ed Marcus' underworld connections and his glaring guilt as a HI-JACKER of a worthy Italian family's two houses, so as not to endanger his election to the State Senate; and 2nd, to discredit the publisher for the statements he had made relative to Town Chairman Arthur Barbieri's underworld connections and by inference, what a gigantic ass New Haven Democrats had made of themselves in elevating such a creature to their managing directorship. The whole party's reputation was at stake, and for that matter, is still at stake, and its predicament is far worse right now than it was then. For a jury of 12 found your editor guiltless as to every word he had uttered about both Ed Marcus and Art Barbieri, and yet the party leaders have not seen fit to withdraw either of them from office or official sanction before the trusting public. As these truths slowly percolate beyond the limited circulation of this minute publication and reach the minds and hearts of more and more voters, there is bound to be a revolt somewhere sometime that will sweep these misguided leaders out of office as well as their backers.

Judge Donegan Finally Shows His Colors

You can't suck pap from the political breast of the Democratic Party in New Haven as long as has Judge Donegan

without being in danger of absorbing some of the lawlessness with which it is saturated. He gives every indication of thinking he is above the law and immune to its punishments. No more deliberate felonies were ever perpetrated by any human being than the two committed by Judge Donegan on Friday, November 28, 1958. The facts were presented with some detail in Issues 38, 39 and 40, but were described merely as actions of falsification without ascribing to them the felonious character set forth by Connecticut statutes.

The facts briefly are these. On the morning of November 17, 1958 before court opened, your editor filed a copy of Issue 37, calling upon Judge Donegan to disqualify himself from further sitting on his case for the reasons set forth therein. After court opened Judge Donegan denied the request and said:

> "I have extended to you every courtesy that any member of the bar is entitled to, or any defendant, but I will not, Mr. Whiteside, again permit contemptuous pleadings to be filed. *I am not going to hold you in contempt, sir,* but the manner in which you filed this pleading, and the language contained therein, in the opinion of the court is contemptuous."

Towards the close of court 7 hours later, Judge Donegan changed his mind and imposed a fine of $100 for the same alleged contempt he had waived in the morning. Your editor was advised by veteran counsel that there was error in Donegan's action which could be carried to the Supreme Court of Errors for correction. When the papers for this purpose were prepared and taken to Donegan for his certification of the court stenographer's transcript and the addition of any facts he might wish to include, as required by law, he crossed out the statement about his having *apparently changed his mind, and altered* the official court transcript of that part quoted on the preceding page, by adding the words *"at this time"* after the underscored word *"contempt"*, so as to

make it read *"I am not going to hold you in contempt at this time, sir."* It was quite obvious he did not like the idea of having the record go up before the high court as indicating he had changed his mind, so he took it upon himself to make a false alteration so he would appear to have reserved decision till the end of the trial, which is the better practice. He knew it was false, I knew it was false, the court reporter knew it was false, and two others present at the time in court knew it was false. THEN DONEGAN CERTIFIED THE FALSE ALTERATION.

IN ALTERING THE RECORD JUDGE DONEGAN INCURRED THE PENALTY OF STATUTE 53-153 which provides that "Any person who shall, wilfully and corruptly, alter any record in the custody of any court, shall be imprisoned in the State Prison not more than 10 years."

BY CERTIFYING THE FALSE ALTERATION JUDGE DONEGAN INCURRED THE PENALTY OF STATUTE 52-165 which provides that "Records of all public offices where records are made of their proceedings by some officer appointed for that purpose, may be proved by a copy certified under the hand of such officer and the seal of such officer; and if any such officer shall knowingly make a false certificate, *he shall be punished in the same manner as if guilty of perjury.*" The perjury statute is 53-143 and calls for imprisonment of not more than 5 years.

Moreover, Judge Thayer in the case of Goodhart vs. State, 84 Conn. 60, at page 62 stated that "To deceive the court by untruthful statements—is unlawful and disorderly conduct, and a *contempt in the face of the court.*" THUS JUDGE DONEGAN HAS LAID HIMSELF OPEN TO STILL A 3rd CHARGE UNDER THE CONTEMPT STATUTE 51-33 permitting the infliction of a penalty up to a fine of $100 or imprisonment up to 6 months.

Fortunately we can conclude this issue on a humorous note. Poor Donegan forgot that when he struck in the words

"at this time," his new sentence could not fit in between his first and last clauses and still make sense. Such an analysis is known as INTERNAL EVIDENCE. You will note that the tenor of his 1st & last clauses is to emphasize how lenient he is by waiving punishment he could have imposed. That becomes silly when he tries to alter the sentence to reserve his decision till later in the trial. Bye. bye. BOBO, better luck next time.

Loring J. Whiteside

May 31, 1961

MOTION FOR CERTIFICATION BY THIS COURT AS TO CONSIDERATION AND REJECTION OF A CONSTITUTIONAL QUESTION

WHEREAS on January 5, 1959 defendant herein filed in the Trial Court below a motion for a Bill of Particulars (Record p. 10) as to all of the 23 counts of the information, certified copy of which is annexed hereto and marked "*Exhibit A*," which was denied by Judge Wall; and

WHEREAS said defendant on January 14, 1959 filed a DEMURRER to the information herein (Record p. 11) in which he stated among other grounds that "It fails to inform him of the nature and cause of the accusation against him, to which he is entitled under Article VI of the Constitution of the United States" as appears in the DEMURRER, certified copy of which is annexed hereto and marked "*Exhibit B*," which was overruled by Judge Wall; and

WHEREAS on that same day, January 14, 1959, defendant indicated his exception to said rulings by Judge Wall by stating his inability to plead either guilty or not guilty (Record p. 11) to any of the 23 counts in the information, for the reason that there were no facts contained in the information to indicate what charges were being made against him, as more clearly appears from the annexed

partial transcript of the minutes on that occasion, limited to the 4 counts upon which defendant was found guilty, and duly certified by Alice R. Masterson, the Court Reporter and Judge Robert A. Wall, and marked *"Exhibit C"*; and

WHEREAS the defendant was thus compelled to enter upon the trial and to present evidence virtually blindfolded as to the nature of the charges against him in violation of his rights under Article VI of the Amendments to the Constitution of the United States requiring that he be informed of the nature and cause of the accusation; and

WHEREAS said deficiency in the clarification and identification of the charges against the defendant was covered on pages 11 & 12 of his BRIEF and on pages 3, 4, 5, 6, 7, 8, 9, 10, 11 & 12 of his REPLY BRIEF, and constituted a major portion of the oral argument before this Court on January 6, 1961, at which time there was an active participation of a majority of the five Justices in the discussion of this defect in the information, and the bewildering consequences it had in the effort of offering the proper testimony, which left both prosecution and defense in a state of confusion and uncertainty as to what should be and what had been proved; and

WHEREAS the interest and comments of the said Justices during the oral argument made it appear to defendant's counsel that they were convinced as to the failure of the information sufficiently to inform the defendant of the nature and cause of the accusation against him so as to enable him properly to prepare his defense; and

WHEREAS the written opinion as handed down by this Court did not state whether the information did inform the defendant of the nature and cause of the accusation against him, thus making it necessary to provide the United States Supreme Court with evidence of the fact that the inadequacy of the information was argued and discussed and

recognized by this Court as a material issue, but was determined adversely to the defendant by this Court, as appears by the simple entry of "no error." heretofore made herein as announced on April 4, 1961;

NOW THEREFORE, the defendant moves this Court for a Certification of these facts, in accordance with similar action requested of and granted by the Supreme Court of Ohio in the case of Cincinnati Co. v. Bay, 200 U.S.179, for presentation to the Supreme Court of the United States in his Petition for a writ of certiorari, now in course of preparation.

Respectfully submitted,

(Signed) Loring J. Whiteside
Defendant, pro se.

(Filed Supreme Court of Errors)
May 31, 1961

June 7, 1961 Motion denied, as the Claims made in it were not included in the assignments of error as set forth on pages 92-98 of the appeal record. Conn. Practice Book Sec. 409. By the Court, Baldwin, C. J.

EXHIBIT A

No. 4144

CRIMINAL COURT OF COMMON PLEAS

December Term A.D. 1958

State of Connecticut v. Loring Whiteside

January 5, 1959

MOTION FOR BILL OF PARTICULARS

The INFORMATION in this case fails to inform the defendant sufficiently to enable him to prepare his defense, or to give him such information as he is entitled to under the constitution of this state. Different witnesses and prep-

arations are required for different statements, so that the defendant is left completely in the dark as to which allegations are regarded by the state as libelous.

Wherefore, this defendant requests that the state set forth the precise statement which is alleged to be libelous as to each of the 64 persons named in the 23 counts of the information.

Section 345 of the Practice Act provides that the "court may, at any time, of its own motion, and *shall* at the request of the defendant made at or before the time at which his plea is entered" order a bill of particulars containing such information as may be necessary for these purposes.

Section "B" of said section 345 provides that when the court finds it to be in the interest of justice that facts not set forth in the information or in any previous bill of particulars, should be furnished to the defendant, it may order such a bill of particulars to be furnished.

(S) Loring J. Whiteside
Defendant pro se.

(Filed Jan. 5, 1959
Kilbride, Asst. Clerk)

EXHIBIT B

January 14, 1959

DEMURRER

The Defendant hereby files a demurrer to the INFORMATION filed against him under Section 8518 of the Connecticut Statutes, in this proceeding, in that

1. None of the counts alleged against him constitute a crime under the statute named.
2. None of the counts against him allege or identify any recognizable crime.
3. Nothing is stated in any of the counts against him to acquaint him with what is supposed to be his offense.

4. The INFORMATION fails completely in all counts to inform him sufficiently to enable him to prepare his defense.
5. It fails to inform him of the nature and cause of the accusation against him, to which he is entitled under Article 6 of the Constitution of the United States, and under Article First, Section 9 of the Constitution of this state.

WHEREFORE, defendant prays for the dismissal of the INFORMATION.

(S) Loring J. Whiteside
Defendant pro se.

(Filed Jan. 14 1959 Lynch, Clerk) Jan. 14, 1959 Overruled Wall, J.

EXHIBIT C

Mr. Tiernan: If Your Honor please, may we have the defendant put to plea on the Information?

Mr. Whiteside: If Your Honor please, it wouldn't be possible for me to make a plea to the Information as it now stands. I couldn't plead either guilty or not guilty. I could plead not guilty to the contents of my issues, of all my letters. I could plead not guilty to that, but there is nothing before the Court. The issues are not before the Court. My letters are not before the Court. No excerpts are before the Court. There is nothing for me to plead guilty or not guilty to. Therefore, I would find it impossible as things now stand to plead either guilty or not guilty. In other words, I just simply am stuck. I can't move. I can't plead either guilty or not guilty.

The Court: Well, under the circumstances, I think that we will take a plea of not guilty. You refuse to plead to the Information?

Mr. Whiteside: As the Information now stands, I cannot plead to it either one way or the other.

The Court: Well, I think the Information should be read.

The Clerk: Mr. Whiteside, how old are you, sir?

Mr. Whiteside: Seventy-one.

The Clerk: George R. Tiernan Prosecuting Attorney of the Criminal Court of Common Pleas of New Haven County accuses Loring Whiteside of the Town of Woodbridge of publishing a libel, and charges that, at the City and County of New Haven, on the 2nd day of July, 1958 the said Loring J. Whiteside published a libel concerning Sydney Alderman and John Monahan, in the form of a weekly called "The Grapevine Press." Issue No. 18, in violation of Section 8518 of the General Statutes.

To the seventh count of the Information, sir, what is your plea, guilty or not guilty?

Mr. Whiteside: I am unable to plead, Your Honor, not knowing what the charge is.

The Court: Enter a plea of not guilty.

* * * * * * *

The Clerk: George R. Tiernan, Prosecuting Attorney of the Criminal Court of Common Pleas of New Haven County, accuses Loring Whiteside of the Town of Woodbridge of publishing a libel, and charges that, at the City and County of New Haven on the 16th day of July, 1958 the said Loring J. Whiteside published a libel concerning Ralph Alderman and Sydney Alderman, Bernard P. Kopkind, Charles L. Flynn in the form of a weekly newspaper called "The Grapevine Press" Issue No. 20, in Violation of Section 8518 of the General Statutes.

To the ninth count of the Information. sir, what is your plea, guilty or not guilty?

Mr. Whiteside: I am unable to plead, Your Honor.

The Court: Enter a plea of not guilty.

* * * * * * *

Clerk: George R. Tiernan, Prosecuting Attorney of the Criminal Court of Common Pleas of New Haven County, accuses Loring Whiteside of the Town of Woodbridge of publishing a libel, and charges that, at the City and County of New Haven on the 6th day of August, 1958 the said Loring J. Whiteside published a libel concerning Bernard P. Kopkind and Charles L. Flynn, in the form of a weekly newspaper called "The Grapevine Press," Issue No. 23, in violation of Section 8518 of the General Statutes.

To the twelfth count of the Information sir, what is your plea, guilty or not guilty?

Mr. Whiteside: I am unable to plead, Your Honor, not knowing what is charged.

The Court: Enter a plea of not guilty.

* * * * * * *

Clerk: George R. Tiernan, Prosecuting Attorney of the Criminal Court of Common Pleas of New Haven County, accuses Loring Whiteside of the Town of Woodbridge of publishing a libel, and charges that, at the City and County of New Haven, on the 10th day of September, 1958 the said Loring J. Whiteside published a libel concerning Sydney Alderman, Ralph Alderman, Daniel Pouzzner and Bernard P. Kopkind, in the form of a weekly newspaper called "The Grapevine Press," Issue No. 28 and Supplement thereto, in violation of Section 8518 of the General Statutes.

To the seventeenth count of the Information, sir, what is your plea, guilty or not guilty?

Mr. Whiteside: I am unable to plead, Your Honor, not knowing what is charged.

The Court: Enter a plea of not guilty.

* * * * * * *

State of Connecticut vs. Loring Whiteside
Court of Common Pleas, New Haven County, January 14, 1959

I hereby certify that the foregoing is a true and correct transcript of what is herein contained upon the trial of the above entitled cause before Hon. Robert A. Wall, Judge, in the Court of Common Pleas for the County of New Haven, Connecticut on January 14, 1959.

Alice R. Masterson, Official Court Reporter

Dated at New Haven this
13th day of April, 1960

The within and foregoing transcript as certified by the Court Reporter is hereby certified and made a part of the record.

Robert A. Wall, Judge

January 8, 1959

MEMORANDUM ON MOTION FOR BILL OF PARTICULARS

In this prosecution for libel the defendant does not contend that he does not have in his possession duplicate issues of "The Grapevine Press" referred to in the information. The defendant seeks in his motion to have the prosecution select from the issues of the paper the precise statement claimed to be libelous as to each of the sixty-four persons named in the twenty-three counts.

Section 9 of the Connecticut Constitution provides that in all criminal prosecutions the accused shall have a right to demand the nature and the cause of the accusation. In this information there are twenty-three counts of libel and some counts allege that more than one person was libeled by the publication. The defendant contends that sixty-four libels are alleged. This is not so. A libel of two or more persons in a single writing constitutes but one offense.

State vs. *Gardner*, 112 Conn. 124

There are many valid reasons for denying the present motion and many authorities to support them. This action is before this court on appeal from the City Court of New Haven as a trial de novo. It can be assumed that all facts were fully presented at that trial and any disclosure here would be merely repetitious.

Ciafirdini vs. *U.S.* 226 Fe. 2 471

In a prosecution charging criminal libel, the defendant was held in Baker vs State 137 SW 2d 938 (cert denied 311 U.S. 666) not to be entitled to a Bill Of Particulars where the information set out in full the alleged libel, a long open letter, containing various accusations, which the defendant had caused to be published in a newspaper, as against the contention that the particular portions of the letters alleged to be libelous were not identified. The court observed that the defendant wrote his own Bill Of Particulars. The court stated: "Had the prosecuting attorney selected and set forth only particular parts or portions of the aforesaid letter and had he failed to show the connection and relation thereof to other portions, it may have been possible to have fallen into error in the failure so to present the charge of libel as to preclude other or further prosecutions growing out of the same letter as written and prepared by the defendant."

Where a motion for a Bill Of Particulars seeks specifications that are within the knowledge of the defendant and the information contains sufficient to enable him to prepare his case, he is not entitled to the relief sought.

State vs. *Parker*, 114 Conn. 354

As the instant motion is directed to the precise statement claimed to be libelous as to each libelee, it is required to be denied.

Wall, Judge

PAGE 24 FROM BRIEF OF THE STATE PREPARED BY PROSECUTOR GEORGE R. TIERNAN FOR THE APPEAL IN CASE OF STATE VS. LORING J. WHITESIDE

XI

Assignment of Error 8, (R. p. 94)

Assignment of Error 8, (R. p. 94) is not mentioned in the defendant's brief. Apparently it has been abandoned. However the State claims that evidence was submitted on the points involved.

Paragraph 7, (R. p. 19) is referred to in the Appendix.

Paragraph 9 (R. p. 19) gives a definition of "Grapevine" the title of the defendant's paper. This merely defines the word and the court can take judicial knowledge of that.

Bergen vs. *Central Vermont Ry. Co.*, 82 Conn. 574, 74 A. 937.

Paragraph 11 included the introduction of the twenty-three issues of "The Grapevine Press" and the testimony of Bernard Kopkind. (App. p. 19)

Paragraphs 13, 15, 17, 19, 21, 23, 27, 31, 33, 37, 39, 41, 43, 47, 49, 51, 53, 55, 57 and 84, pertain to counts on which the defendant was acquitted so that a discussion of these paragraphs is unnecessary.

Paragraph 58 is supported by the evidence submitted by a witness called by the defendant, Sergeant William Pascale. (App. p. 19)

Paragraph 60 was testified to by Ralph Alderman, witness called by the defendant. (App. p. 20)

Paragraph 62 was evidence given by Angelo Chiaramonte, (App. p. 20), and his wife. (App. p. 22)

4769

THE SUPREME COURT OF ERRORS.
STATE OF CONNECTICUT

New Haven County — January Term — 1959

LORING J. WHITESIDE vs. THE STATE OF CONNECTICUT

September 1, 1960

MOTION FOR PERMISSION TO FILE MOTION FOR CORRECTION OF RECORD

The plaintiff in error requests permission to file the attached Motion for Correction of Record, in accordance with Section 423, paragraph 2, of the Practice Book.

(Signed) Loring J. Whiteside
Plaintiff in error Pro se.

Filed: September 1st, 1960

August 30, 1960

MOTION FOR CORRECTION OF RECORD

The plaintiff in error, aggrieved by the action of the trial court as regards a correction made by the court to the certified transcript of the record of the official court stenographer, moves for an order directing that said record be corrected so that the certified transcript of the record of the official court stenographer, of which the portion in question is attached hereto, constitute the record in this proceeding, or for an order directing such action as it deems proper.

(Signed) Loring J. Whiteside
Plaintiff, pro se.

Filed: September 1st, 1960

October 5th, 1960

The Motion for Permission to File
Motion to Correct Record is granted.

The Motion for Correction of the Record is denied.

By the Court, Baldwin, C.J.

Portion of Certified Transcript:

The Court: I have read your motion, sir, and I have also listened to your comments and as far as your comments are concerned you can make whatever motion you care to at the conclusion of the State's case. If it be your opinion at this time that what has thus far been offered by the Prosecutor does not establish a crime in your opinion, you are entitled to make whatever motion you desire when the State rests its case. As far as the rest of the pleading is concerned, Mr. Whiteside, I only want to say this to you: I have extended to you every courtesy that any member of the bar is entitled to, or any defendant, but I will not, Mr. Whiteside, again permit contemptuous pleadings to be filed. I am not going to hold you in contempt sir, but the manner in which you filed this pleading, and the language contained

I hereby certify that the within and foregoing 4 pages contain an accurate, partial transcription of the testimony received upon the trial of the case, STATE OF CONNECTICUT vs. LORING J. WHITESIDE, namely the remarks at the opening of the third day of the trial and the closing remarks of the Court, in part, held before the Honorable HAROLD C. DONEGAN, a Judge of the Municipal Court of New Haven, at New Haven, on the 17th day of November, 1958.

Florence Lotty, Official Stenographer

4.69

THE SUPREME COURT OF ERRORS, STATE OF CONNECTICUT

New Haven County — January Term — 1959

LORING J. WHITESIDE vs. THE STATE OF CONNECTICUT

September 29, 1960

MOTION FOR CORRECTION OF RECORD

The plaintiff in error respectfully moves the Trial Court to rectify the Record in this case by striking from the transcript of the official court stenographer the three words "at this time" which did not appear in the stenographer's certified copy, but were inserted by the court subsequent to her certification. That portion of the transcript affected, as certified by the official court stenographer, reads as follows:

> "As far as the rest of the pleading is concerned, Mr. Whiteside, I only want to say this to you: I have extended to you every courtesy that any member of the bar is entitled to, or any defendant, but I will not, Mr. Whiteside, again permit contemptuous pleadings to be filed. I am not going to hold you in contempt, sir, but the manner in which you filed this pleading, and the language contained therein in the opinion of the Court is contemptuous."

Judge Harold C. Donegan, before adding his own certification to the transcript, inserted the three words *"at this time"* in the 5th line of the above quotation after the word "contempt" and before the word "sir," thus substantially altering the meaning and purpose of his remarks in court.

The plaintiff in error hereby moves for an order striking out the three words "at this time" from all three places in the

Record where they have been inserted by Judge Donegan, thus restoring the certified transcript of the official stenographer to be the official Record in this case.

(Signed) Loring J. Whiteside
Plaintiff in error, pro se.

ORDER
THE ABOVE MOTION IS HEREBY DENIED
The Court (Donegan, J.) By Harry Koletsky, Clerk

Filed Sept. 29, 1960 with
Clerk of the Municipal Court, New Haven, Conn.

October 8, 1960

MOTION FOR PERMISSION TO REARGUE THE MOTION FOR CORRECTION OF RECORD

WHEREAS, said MOTION FOR CORRECTION OF RECORD was argued before this Court last Tuesday, October 4, whereat attorney Villano at the conclusion of his argument for the State, presented a case not set forth in his written argument, which he claimed controlled the determination of this motion because of its identity with the state of facts upon which the pending motion was based; and

WHEREAS, the plaintiff was unable to make reply to his presentation without an opportunity of examining the case for which time did not permit before the termination of the oral argument; and

WHEREAS, the plaintiff examined the case within an hour later and found it lacked the most important factual element of the present case and thus is not suitable as a factor in its determination; and

WHEREAS, the plaintiff prepared a short addendum to his written argument and posted 6 copies to Mr. Calnen, the Clerk of this Court, on Wednesday, October 5, which could not reach him until October 6, only to find today,

October 8, that the motion had been denied under date of October 5, before the Addendum could possibly reach the Court, copy of which is hereto annexed; now, therefore,

The plaintiff in error hereby respectively moves for permission to REARGUE THE MOTION FOR CORRECTION OF RECORD at the Court's earliest convenience.

(Signed) Loring J. Whiteside
Plaintiff in error, pro se.

(Filed with Clerk of Supreme Court of Errors
for New Haven County Oct. 10, 1960)

October 11, 1960.
Motion denied by the Court, Baldwin C. J.

October 5, 1960

ADDENDUM TO PLAINTIFF'S WRITTEN ARGUMENT ON MOTION FOR CORRECTION OF RECORD

Not until the plaintiff left the court room yesterday morning was he able to examine the case of *Papallo* vs. *Meriden Savings Bank*, 128 Conn. 289, offered by Mr. Villano as decisive of this motion. That case states the law clearly as to a judge's right and duty to correct an inaccurate transcript, which is so well settled in this state that the plaintiff simply assumed that to be the law without question. It certainly would be a queer state of affairs for stenographers to be able to override judges in determining what was actually done in court. But this does not give license to a judge to insert and certify false additions to a transcript. His right and duty to change certainly applies only to true and not to false corrections.

This Judge Donegan case is one where the plaintiff knows the 3 words added by the Judge is a false correction, and seeks to point out how the falsity can be ascertained

simply by a study of the Judge's remarks immediately preceding and following the disputed 3 words. By this test it is evident that the stenographer's transcript sets forth a logical sequence of remarks, whereas the addition of the 3 words by the Judge upsets both the continuity and the logicity. Wherefore, the plaintiff urges upon this Court the complete failure of the State to supply any reasonable evidence to overcome the prima facie correctness of the stenographer's transcript. In fact, the 3 word addition offered by the Judge, upon due analysis, only confirms instead of overcoming the presumption of Statute 52-161 as to the correctness of the exemplified transcript in this case.

Respectfully submitted,

Loring J. Whiteside, Plaintiff in error pro se.

DECISION SUPREME COURT OF ERRORS

December Term, 1960

LORING J. WHITESIDE v. STATE OF CONNECTICUT

Writ of error from the action of the Municipal Court of New Haven, *Donegan, J.*, in adjudging the plaintiff in error guilty of contempt of court. *No error.*

Loring J. Whiteside, pro se, the plaintiff in error.

Vincent Villano, for the defendant in error.

KING, J. The plaintiff in error, hereinafter referred to as the accused, was tried in the Municipal Court of the city of New Haven under an information in twenty-six counts charging him with the offense of criminal libel in violation of what is now § 53-174 of the General Statutes. At the close of the trial, the accused was adjudged guilty on twenty-four counts. Immediately thereafter, and before the imposition of sentence, the court found the accused guilty of contempt of court and for that imposed a fine of $100.

Where a contempt occurs in the presence of the court, no witnesses are required in proof of the contempt, and

the court has inherent power to impose punishment on its own knowledge and of its own motion, without formal presentation or hearing of the person adjudged in contempt. *State* v. *Jackson*, 147 Conn. 167, 169, 158 A.2d 166; *McCarthy* v. *Hugo*, 82 Conn. 262, 266, 73 A. 778. Section 51-33 of the General Statutes provides that in such a case no court shall inflict a greater fine than $100 or a longer term of imprisonment than six months. The sole method of review is by writ of error. *Goodhart* v. *State*, 84 Conn. 60, 63, 78 A. 853. The real claim of the accused is that the contempt did not occur in the presence of the court and that consequently the court was without jurisdiction to make a summary adjudication of contempt. See *Goodhart* v. *State*, supra. The writ of error which the accused brought to obtain a review of the adjudication of contempt contains (1) exhibit A, which is a bill of exceptions incorporating by reference exhibits B and C; (2) exhibit B, which is a copy of a demurrer and a request or motion that the judge disqualify himself, and which was filed and argued by the accused during the course of the trial; and (3) exhibit C, which is a transcript of so much of the proceedings on the criminal trial as relates to the contempt.

On the morning of the third day of the criminal trial, immediately prior to the opening of court, the accused filed with the clerk a so-called demurrer, which alleged that "none of the counts against [the accused] . . . constitute a crime under" what is now § 53-174 of the General Statutes. To this demurrer the accused attached a clipping of an article which had just appeared in an issue of "the grapevine press," a weekly pamphlet published by him. The article, which was over his name, purported to request the presiding judge to disqualify himself from further participation in the criminal trial for certain stated reasons, many of which were so clearly insulting and contemptuous, as well as wholly improper in connection with any motion

for disqualification, that we refrain from reciting them. Thereafter, upon the opening of court, the accused was informed by the court that it had been furnished with what purported to be a demurrer filed that morning with the clerk. The accused was given an opportunity to be heard thereon. At the close of his remarks on the demurrer, he asked the court if it wanted him to speak about his request that the judge disqualify himself, and the court replied that it was not asking him to make any comment but would give him an opportunity to be heard on the pleading which he had filed. Thereupon the accused stated that the bulk of his comment on the request that the judge immediately disqualify himself from sitting further in the case was "pretty well covered in the printed portion of this motion."

The accused claims that the motion was not a contempt committed in the presence of the court—and therefore he was not subject to summary punishment—because the motion was filed in the clerk's office prior to the opening of court. See cases such as *State* v. *Jackson*, 147 Conn. 167, 169, 158 A.2d 166. We are not called upon to decide this claim; see 17 C.J.S. 39; because the accused took it upon himself in open court to refer the court to "the printed portion of this motion" in lieu of an oral argument. This amounted to a repetition, in open court, of the statements in the motion. It was as much a contempt as though the statements had orally been repeated verbatim in the courtroom. The only possible difference in effect would be, not on the court itself, but on any persons in the courtroom who were not acquainted with the language of the motion. The claim of the accused seems to be that only contemptuous statements audibly addressed to the court, as distinguished from such statements in a writing submitted to the court, can constitute a contempt in the presence of the court. The mere statement of such a proposition is sufficient to refute it.

The article in "the grapevine press" purported to be,

and was obviously claimed by the accused to be, an instrument amounting to a motion or request that the judge, for the reasons stated therein, disqualify himself. The motion and supporting reasons constituted one pleading, which in its entirety was deliberately phrased in an insulting and contemptuous manner. The procedure pursued was wholly unnecessary in order to raise any proper claim of disqualification. Statement made in a motion for disqualification, if they are pertinent and germane to the motion, are phrased in a proper and respectful manner and are honestly and reasonably believed to be true by the draftsman, are not a contempt of court, even though they may necessarily, in certain situations, reflect adversely upon the conduct or character of the judge. Many of the statements contained in the present motion were neither pertinent nor germane to the issue of disqualification. They were deliberately phrased in a grossly improper and disrespectful manner. Nor could they reasonably have been believed by the accused to be true. See cases such as *Huggins* v. *Field*, 196 Ky. 501, 505, 244 S.W. 903; note, 29 A.L.R. 1273. As stated in *Huggins* v. *Field*, supra, 507, "[s]uch a tirade of abuse is far removed from a good faith statement of facts to show bias or prejudice [or other proper ground for disqualification]."

The accused points out that the court, in finding him guilty of contempt, stated that he had been contemptuous in "filing" the issue of "the grapevine press" and had been "most contemptuous in [his] . . . pleading here this morning." The accused claims that this statement eliminated, as a ground for the adjudication of contempt, any argument of the motion and restricted the ground to the mere act of filing the motion. He then claims that since this filing occurred prior to the opening of court it did not take place in the presence of the court. This claim is more ingenious than persuasive.

The whole course of action of the accused was improper in the extreme, including his publication of an article in "the grapevine press" in the form of a motion or request for disqualification and his subsequent filing of a printed clipping of that article as such a motion. All this created such a state of confusion that the accused is not entitled to take advantage of any hypertechnical dissection of the apparently extemporaneous remarks of the court, after this most outrageous attack upon it, in adjudicating the accused in contempt. See cases such as *Buden* v. *Dombrouskas*, 147 Conn. 728, 730, 166 A.2d 157. The contempt here occurred in the presence of the court, and it was proper for the court to impose punishment on its own motion and of its own knowledge, without formal presentation of the accused on any charge. *State* v. *Jackson*, 147 Conn. 167, 169, 158 A.2d 166.

Another claim of the accused, which is apparently based on some theory of waiver, was that the court had divested itself of any right to punish him for contempt because at the opening of court, after the court heard the accused on the demurrer and the motion for disqualification, it said: "I will not, Mr. Whiteside, again permit contemptuous pleadings to be filed. I am not going to hold you in contempt . . . sir, but the manner in which you filed this pleading, and the language contained therein in the opinion of the Court is contemptuous." The court had a right subsequently to change its mind during the course of the trial. The accused does not claim, nor does the record indicate, that he did, or refrained from doing, anything in reliance on the court's statement that although he had committed a contempt he would not be adjudged in contempt. Punishment for contempt in the presence of the court is summary, and subject only to the limited review outlined in *Goodhart* v. *State*, 84 Conn. 60, 63, 78 A. 853, and *State* v. *Jackson*, 147 Conn. 167, 169, 158 A.2d 166. Because of the necessarily drastic

character of the procedure, it is often a wise practice, where the circumstances do not compel immediate action, for a court to defer making the adjudication until it has had some opportunity for consideration and reflection. The course pursued here in effect conformed to that practice. Even if the warning given the accused by the court could be distorted into an adjudication that he would not be found in contempt, that adjudication remained subject to change during the course of the trial. *Cichy* v. *Kostyk*, 143 Conn. 688, 696, 125 A.2d 483; see *State* v. *Maresca*, 85 Con.. 509, 83 A. 635; *State* v. *Belanger*, 148 Conn. (22 Conn. L.J., No. P.). The theory of waiver has no application to the right and power of a court to change its judgment in a situation such as this.

The court corrected the stenographic transcript appended to the writ of error by the insertion, in the quotation of its remarks as set forth above, of the words "at this time" after the words "I am not going to hold you in contempt." The court was not only entitled, but it was its duty, to correct the transcript incorporated in the bill of exceptions, in order to make the transcript conform to the fact. *Papallo* v.*Meriden Savings Bank*, 128 Conn. 289, 291, 22 A.2d 637. The accused took no proper steps to have the claimed erroneous addition deleted. Ibid. However, for the reasons already outlined. the result here would be unchanged even if the court had made no correction in the transcript. Parenthetically, it should be noted that some errors are likely to occur in a transcript of any length, even with the most accurate and efficient of reporters. See *State* v. *Gerich*, 136 Conn. 705, 708. 73 A.2d 821.

There is no error.

In this opinion the other judges concurred.

[Date of Supreme Court Judgment. Jan. 24, 1961]

[Decision Announced, Jan. 31, 1961]

[Reported in 148 Conn.77-84 Part I of advance sheets]